

# Documentation



## IMPROVING DETENTION CONDITIONS AT EU LEVEL

BEST PRACTICE, LEGISLATION AND THE FOLLOW-UP  
TO THE EUROPEAN COMMISSION'S GREEN PAPER



317DT03 Trier, 1-2 June 2017



Co-funded by the Justice  
Programme of the European Union 2014-2020





## Improving Detention Conditions at EU Level

Best Practice, Legislation and the Follow-Up to the European Commission's Green Paper

Trier, 1-2 June 2017

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE  
**Criminal  
Law**



### Key topics

- Follow-up to the EU Green Paper on the application of EU criminal justice legislation in the field of detention
- State of play of EU action in the field of detention
- Best practice in relation to supervision of detention conditions
- Good practices in prison management
- Update on the proper implementation of Framework Decisions 829, 909 and 947 and the European Arrest Warrant in relation to detention

### Languages

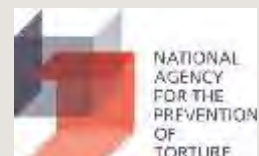
English, German  
(with simultaneous interpretation)

### Event number

317DT03

### Organiser

ERA (Ramin Farinpour) in cooperation with the Council of Europe, the European Organisation of Prison and Correctional Services (EuroPris), the Polish Commissioner for Human Rights and the German National Agency for the Prevention of Torture



Co-funded by the Justice  
Programme of the European Union 2014-2020

# Improving Detention Conditions at EU Level

**Thursday, 1 June 2017**

8:30 Arrival and registration of participants

9:00 **Welcome and introduction**  
*Ramin Farinpour*

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## I. IMPROVING MEASURES RELATED TO DETENTION CONDITIONS AT EU LEVEL

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*Chair: Ramin Farinpour*

09:10 **Managing prisons and developing appropriate policies on imprisonment: where do EU Member States fit within the global picture and in the context of the World Prison Brief?**  
*Catherine Heard*

09:45 **An overview of the latest prison policies in Europe:**

- initiatives in effective prison management
- national monitoring bodies of prison conditions and the European standards
- dealing with overcrowding and implementing alternatives to imprisonment

*Nuno Pontes*

10:15 Discussion

10:45 Coffee break

11:15 **An overview of findings from two reports from the EU Agency for Fundamental Rights (FRA):**

- Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers
- Rehabilitation and mutual recognition – practice concerning EU law on transfer of persons sentenced or awaiting trial (prison and detention)

*Jonas Grimheden*

11:45 **State of play of EU action in the field of detention**  
*Jesca Beneder*

12:00 Discussion

12:30 Lunch

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## II. GOOD PRACTICES IN PRISON MANAGEMENT

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*Chair: Catherine Heard*

13:30 **Good governance and supervision by inspecting authorities in relation to prison needs**  
*Christiane Jesse*

14:00 **Effective training of prison staff and ensuring education of prisoners**  
*Anders Backman*

14:30 Discussion

15:00 Coffee break

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## III. THE ROLE OF NATIONAL MONITORING SYSTEMS IN DEALING WITH DETENTION ISSUES AND IMPROVING CONDITIONS

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*Chair: Gerrit Zach*

15:30 **The role of National Preventive Mechanisms and case studies in Poland and Germany**

- *Przemysław Kazimirski*
- *Jennifer Bartelt*

16:30 Discussion

## Objective

This final seminar in a series of five co-funded by the European Commission on issues related to detention will focus on the follow-up to the EU's Green Paper on detention and the ongoing debate and developments surrounding it, as well as provide an update on the implementation and use of the relevant Framework Decisions.

## Who should attend?

Judges, prosecutors, lawyers in private practice, ministry officials, and officials from judicial training institutions, prison administrations, the probation system and prison-monitoring bodies.

## CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to 10.5 CPD hours.

## Discover Trier

Discover Trier, built on centuries of history and surrounded by diverse culture. Experience what inspired the Romans, immerse yourself in the city's rich and varied history, or simply take a stroll and soak up the atmosphere. Explore some of the main attractions and landmarks and visit the Porta Nigra, the Cathedral of Saint Peter and Constantine Basilica to name but a few.



## Save the date

**Summer Course on European Criminal Justice**  
Trier, 19-23 June 2017

**Annual Conference on Border Management 2017**  
Trier, 28-29 September 2017

## Your contact persons



Ramin Farinpour  
Senior Lawyer  
E-Mail: rfarinpour@era.int



Liz Klopocki  
Assistant  
E-Mail: eklopocki@era.int

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**IV. MOVING FORWARD: BETTER PRISON MANAGEMENT AND MONITORING IN EUROPE WITHIN THE CONTEXT OF THE RELEVANT FRAMEWORK DECISIONS AND EUROPEAN ARREST WARRANT**

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*Chair: Ramin Farinpour*

- 17:00 **Findings from the ERA-BIM Study on the future of mutual trust and the prevention of ill-treatment: how to improve judicial cooperation and the engagement of national preventive mechanisms**  
*Gerrit Zach*
- 17:30 Discussion
- 17:45 End of first seminar day
- 19:30 Dinner

## Friday, 2 June 2017

- 09:00 **The practice of pre-trial decision-making in the EU and its effects: latest developments**  
*Ralph Bunche*
- 09:30 **Framework Decision 909 on the transfer of prisoners: an update on issues, processes and practices in relation to its use**  
*Katja Dogovic*
- 10:00 Discussion
- 10:30 Coffee break
- 11:00 **Framework Decision 947 on probation and alternative sanctions and Framework Decision 829 on the European Supervision Order: latest developments in relation to their use and overcoming practical issues**  
*Antonius Maria van Kalmthout, Ioan Durnescu*
- 11:30 Discussion
- 11:45 **Simultaneous workshops:**
- **Applying the Framework Decision on the transfer of prisoners (FD 909) in practice**  
*Katja Dogovic*
  - **Applying the Framework Decisions on probation and alternative sanctions (FD 947) and on the European Supervision Order (FD 829) in practice**  
*Antonius Maria van Kalmthout, Ioan Durnescu*
  - **Effective tools in prison management, monitoring and treatment of prisoners**  
*Christiane Jesse*
- 12:45 Workshop reports and participant discussion
- 13:15 End of seminar and lunch

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For programme updates: [www.era.int](http://www.era.int)  
Programme may be subject to amendment.

## Speakers

**Anders Backman**, Prison Governor, Swedish Prison and Probation Service, Malmö

**Jennifer Bartelt**, Research Associate, National Agency for the Prevention of Torture, Wiesbaden

**Jesca Beneder**, Legal Officer, Procedural Criminal Law Unit, Directorate-General Justice and Consumers, European Commission, Brussels

**Ralph Bunche**, Regional Director – Europe, Fair Trials, Brussels

**Katja Dogovic**, Chief Lawyer, Criminal Sanctions Agency, Finnish Prison and Probation Service, Helsinki; Co-chair of EuroPris FD 909 Expert Group

**Dr Ioan Durnescu**, Professor, Faculty of Sociology and Social Work, University of Bucharest; Confederation of European Probation (CEP) Member

**Ramin Farinpour**, Senior Lawyer, Course Director, European Criminal Law Section, ERA, Trier

**Dr Jonas Grimheden**, Senior Policy Manager, Freedoms and Justice Department, European Union Agency for Fundamental Rights (FRA), Vienna

**Catherine Heard**, Senior Research Fellow; Programme Director of the World Prison Brief, Institute for Criminal Policy Research (ICPR), Birkbeck College, University of London

**Christiane Jesse**, Head of Prison Services Department, Ministry of Justice of Lower Saxony, Hanover

**Dr Antonius Maria van Kalmthout**, Lawyer, Member of the European Committee for the Prevention of Torture (CPT), Tilburg

**Przemysław Kazimirski**, Deputy Head, National Preventive Mechanism Department, Commissioner for Human Rights, Warsaw

**Nuno Pontes**, Researcher, Centre for Research and Studies in Sociology (CIES), University Institute of Lisbon; Member, European Prison Observatory

**Gerrit Zach**, Researcher, Ludwig Boltzmann Institute of Human Rights (BIM), Vienna

# Registration

Improving Detention Conditions at EU Level

Trier, 1-2 June / 317DT03/ek



## Registration

Fax: +49 (0) 651 93737-773

E-mail: [info@era.int](mailto:info@era.int)

Online registration:  
[www.era.int/?126477&en](http://www.era.int/?126477&en)

Postal address:  
ERA  
Postfach 1640  
D-54206 Trier

## Location

ERA  
Metzer Allee 4  
54295 Trier  
Germany

## Languages


English and German  
(with simultaneous interpretation)

## Contact Person

Liz Klopocki  
Assistant  
[eklopocki@era.int](mailto:eklopocki@era.int)  
0049 651 93737 322

## Accommodation at special rates

 Vienna House Easy Trier,  
from € 95  
[www.viennahouse.com](http://www.viennahouse.com)  
+49 (0)651-9377-0

 Villa Hügel Trier, from € 102  
[www.hotel-villa-huegel.de](http://www.hotel-villa-huegel.de)  
+49 (0)651-93710-0

 Park Plaza Trier, from € 110  
[www.parkplaza-trier.de](http://www.parkplaza-trier.de)  
+49 (0)651-9993-0

Contact the hotel directly to make your reservation (see para. 16 [www.era.int/legalnotice](http://www.era.int/legalnotice)).

Please indicate the event your will attend.



[www.era.int/?126477&en](http://www.era.int/?126477&en)

## I would like to register for the ERA event mentioned above.

Please update my address (see below)  My address (above) is correct  Please delete my address

### PLEASE USE BLOCK CAPITALS:

Title  Ms  Mr Other

First Name

Surname

Organisation

Department  Tel.

E-Mail

Street

Postcode/City  Country

Chosen seminar language:  English  German

Evening programme: I shall attend the dinner on 1 June 2017 (at no extra charge).

## Registration fee

Fee	Standard
Registration	€ 111.00
no discounts available	<input type="checkbox"/>

## Method of payment

- Credit card For registration with credit card payment please go to our website [www.era.int/?126477&en](http://www.era.int/?126477&en)
- Cheque Cheque number \_\_\_\_\_
- Bank transfer

I will transfer the registration fee to ERA's account at Deutsche Bundesbank Saarbrücken:  
IBAN: DE145900 00 00 00 58501900 – BIC: MARKDEF1590

**Important! Please state your name and the event number on the bank transfer.**

I confirm my registration and accept the general terms and conditions: [www.era.int/legalnotice](http://www.era.int/legalnotice)

Place, Date

Signature

# Improving Detention Conditions at EU Level

ERA Trier 1 – 2 June 2017

Catherine Heard, Institute for Criminal Policy Research,  
Birkbeck, University of London



Co-funded by the Justice Programme  
of the European Union 2014-2020

# EU Member States in a global context

- Institute for Criminal Policy Research (ICPR) carries out academically grounded, policy oriented research into crime and justice.
- [World Prison Brief](#), database compiled by ICPR's prison studies team, hosted and published by ICPR
- This presentation puts continental Europe and EU Member States in the wider global imprisonment context



# The World Prison Brief

- Free access to best available data on global prisoner numbers from at least year 2000. Over 220 countries.
- For each country, the latest stats and reports on
  - prison population
  - prison population rate per 100,000 of the national population: PPR
  - use of imprisonment for women and juveniles
  - extent of pre-trial imprisonment
  - prison overcrowding

## World Prison Brief data

Africa

Asia

Caribbean

Central America

Europe

Middle East

Northern America

Oceania

South America

Highest to Lowest

 Latest Tweets

Tweets by @ICPSLONDON

 ICPS  
@ICPSLONDON

Bangladesh - Study: NGOs help to improve justice system  
[dhakatribune.com/bangladesh/law...](http://dhakatribune.com/bangladesh/law...)



We aim to make the World Prison Brief progressively more comprehensive and useful and we always welcome new or updated information from reliable sources.

Please see the 'About WPB' section for details on how to submit information.



# Core WPB publications

- World prison population list
- World pre-trial imprisonment list
- World female imprisonment list
- International prison news feed
- Bi-monthly prison news digest
- *A Human Rights Approach to Prison Management: Handbook for Prison Staff (2<sup>nd</sup> edn 2009)*

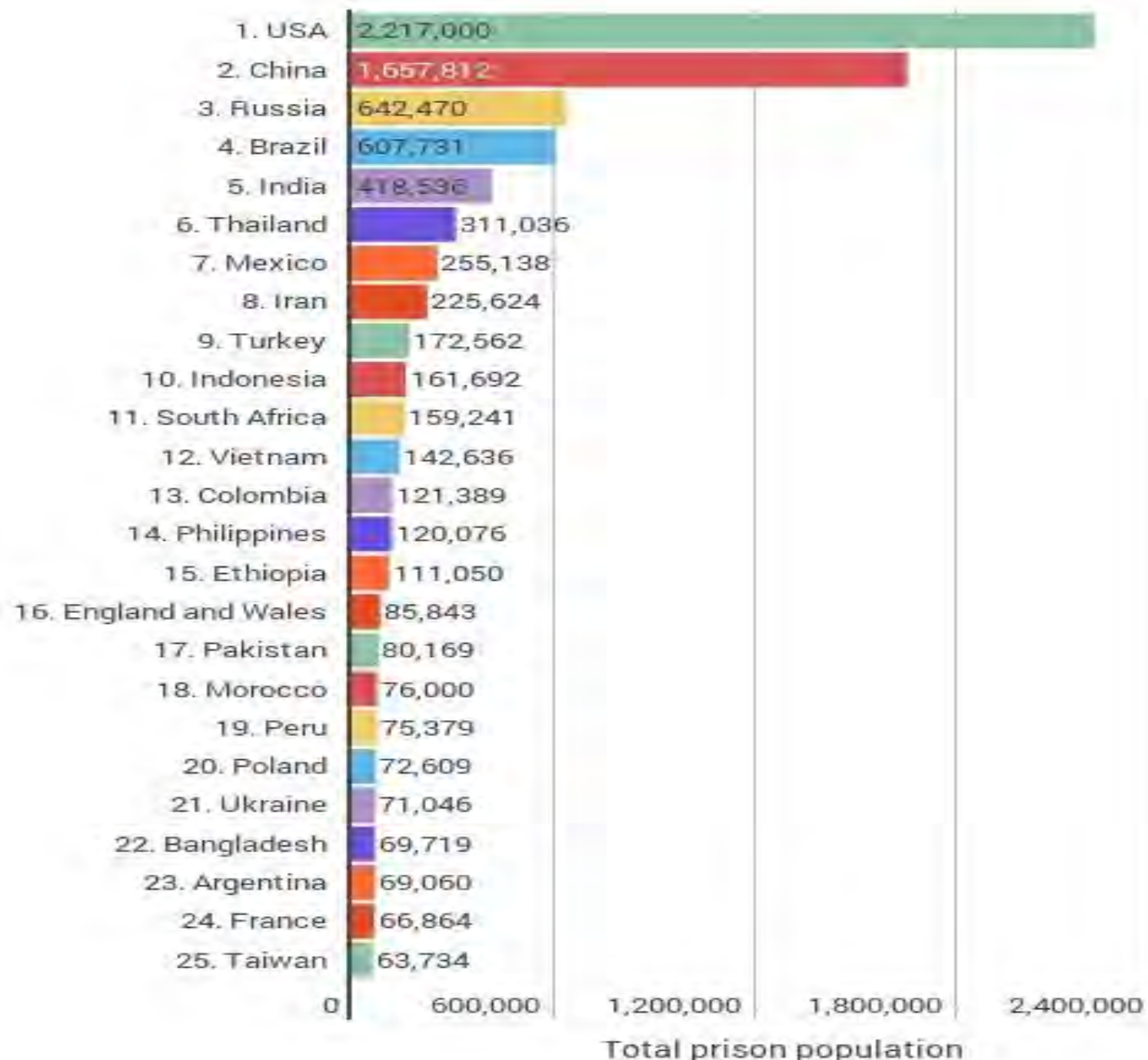
# Global share of the world's prisoners by continent



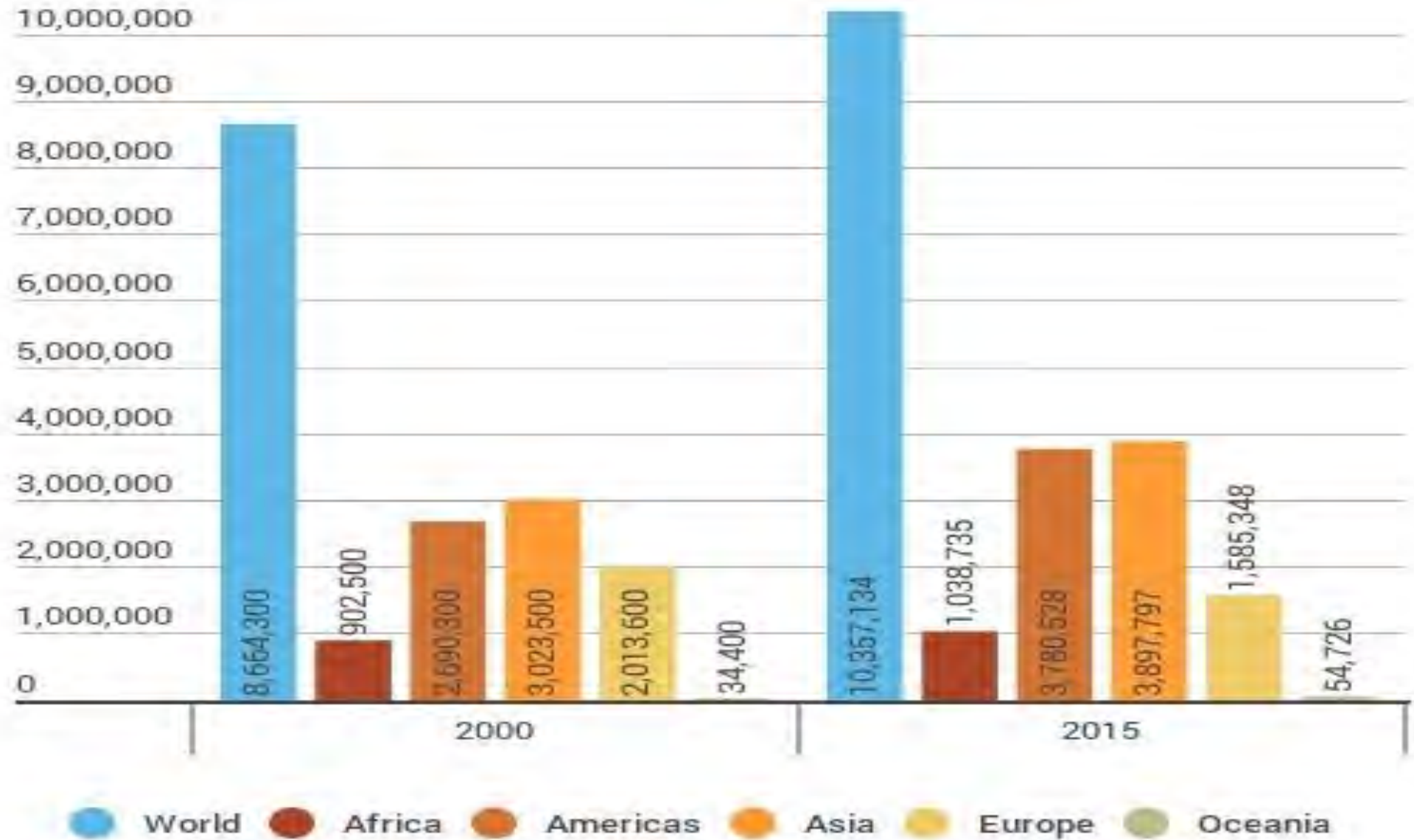
● Africa - 1,038,735 ● Americas - 3,780,528 ● Asia - 3,897,797  
● Europe - 1,585,348 ● Oceania - 54,726

# The world's top 25 incarcerators

(total prisoner populations)

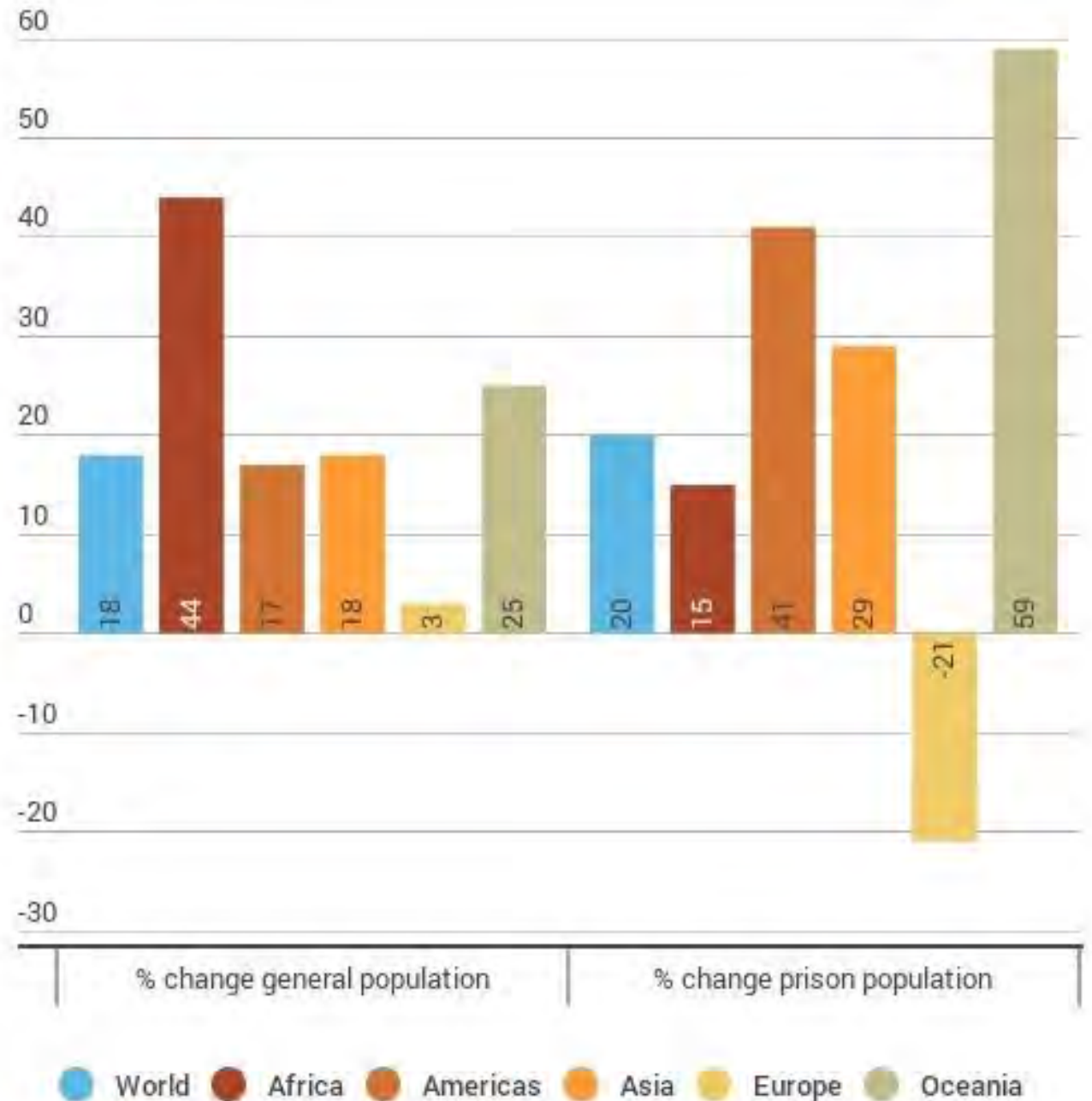


# Prisoner totals – how have they changed since 2000?



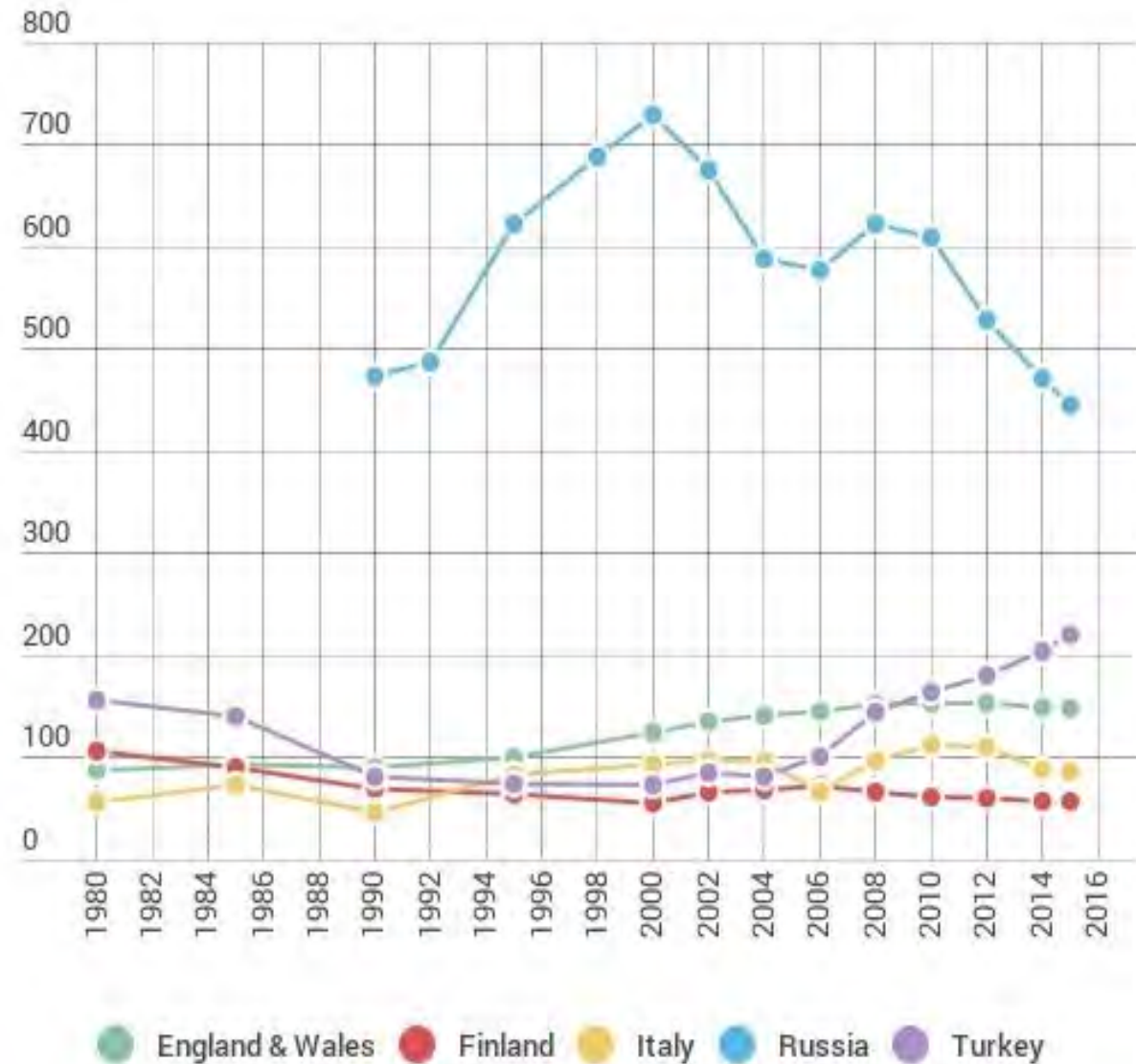
## How does that compare with changes in general populations, 2000 – 2015 ?

- world prison population – up by 20%
- world's general population – up 18%
- prison population in Americas and Oceania up 41% and 59% respectively
- 21% decline in the European prison population – 3% growth in general population



# Continent of Europe

- Has 15% of the world's prisoners
- and 12% of its general population
- This continent saw greatest fall in prisoners since 2000 – but largely due to Russia

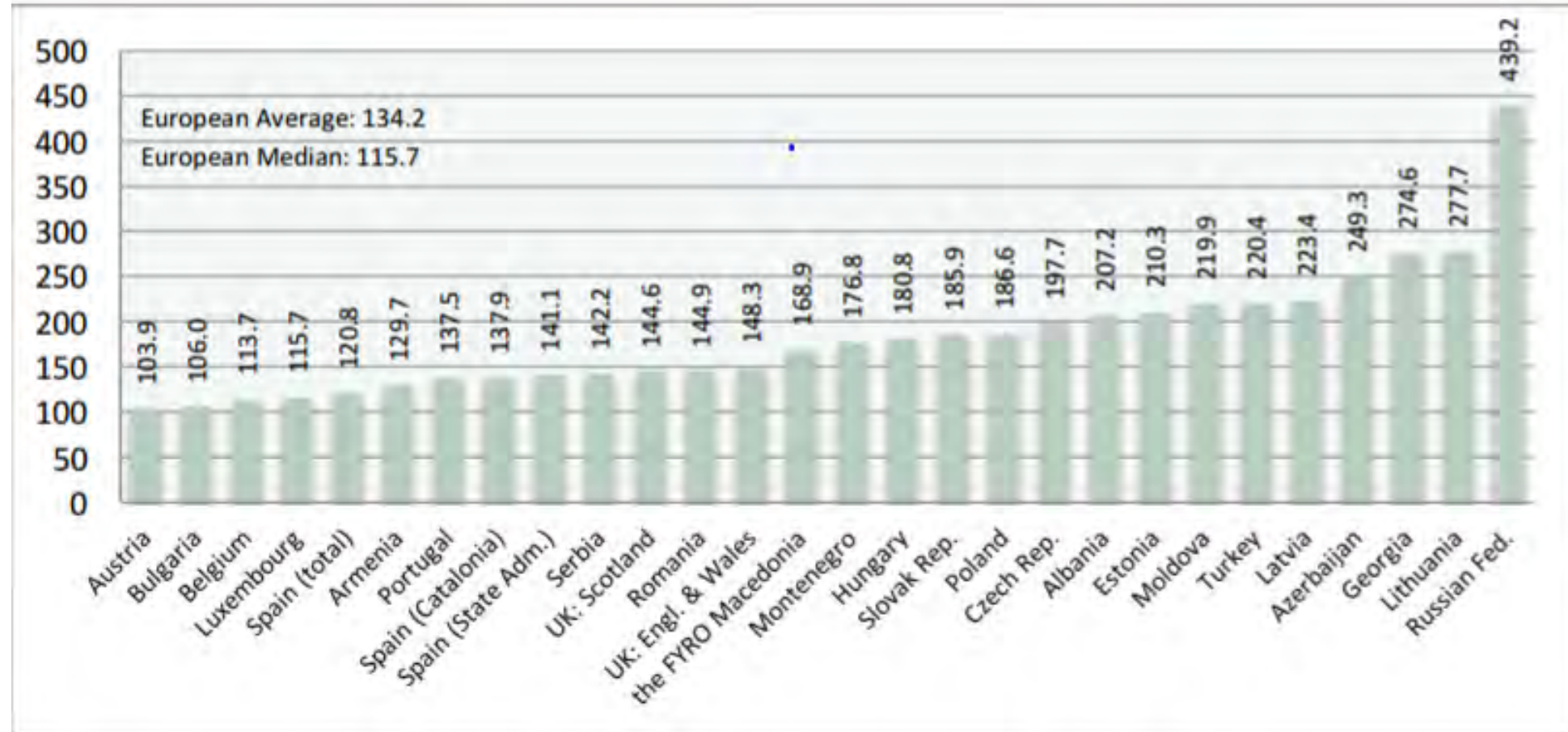




## Council of Europe highest PPR countries

- of which more than half are EU member states
- How many of these EU countries have prisons at over 100% capacity?

FIGURE 1.A: COUNTRIES WITH MORE THAN 100 PRISONERS PER 100 000 INHABITANTS  
(HIGHEST PRISON POPULATION RATES)



Source: Council of Europe, SPACE report, PC-CP (2016) (6)

# Reducing PPRs in Europe 2014 – 2015

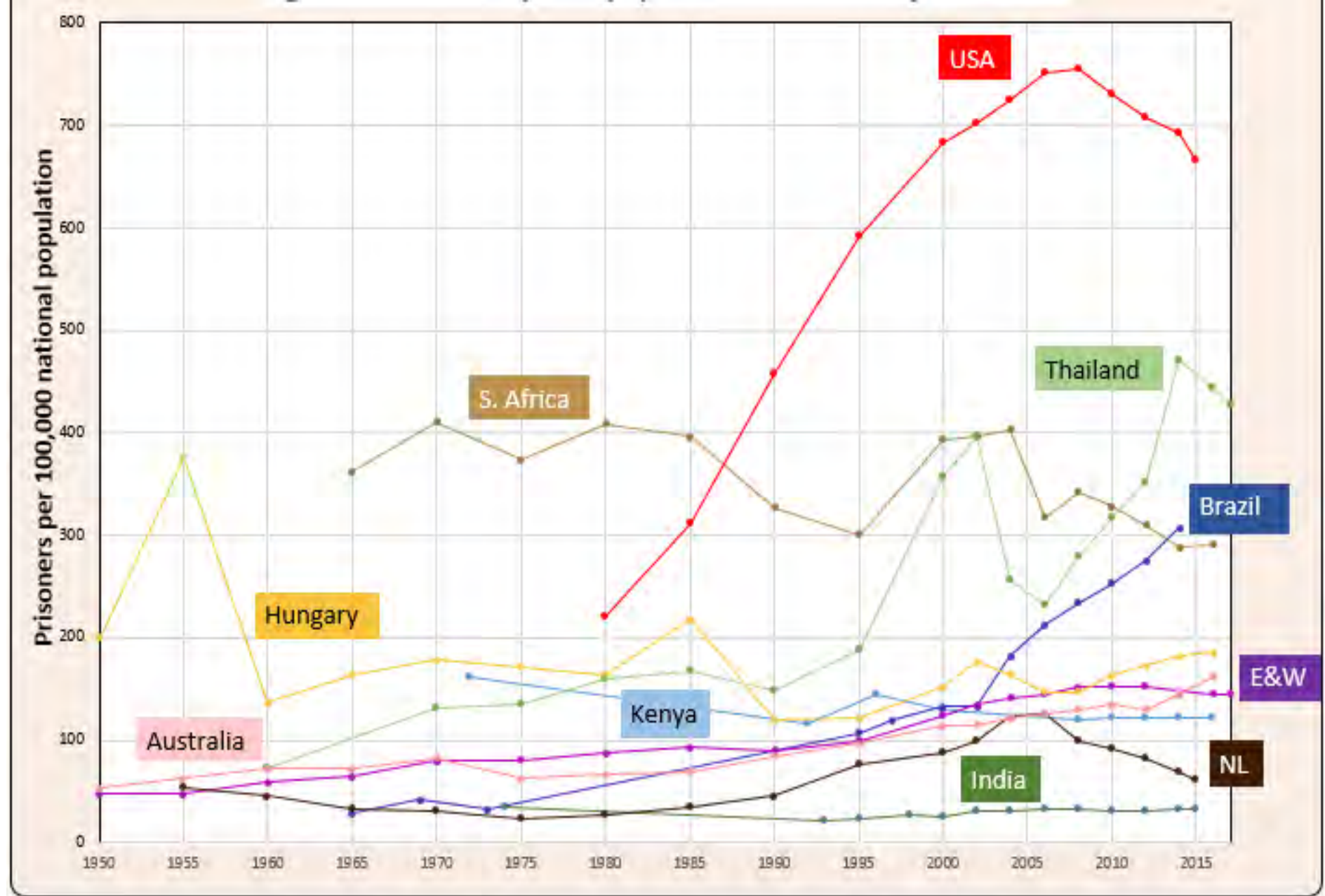
Source: Council of Europe, SPACE report, PC-CP (2016) (6)

	Germany	-4.8		
	Sweden	-3.6		
	Belgium	-3.5		
	Finland	-3.5		
	Norway	-3.5		
	Ireland	-3.3		
	France	-3.2		
	Italy	-3.2		
	Andorra	-3.2		
	Luxembourg	-3.0		
	Cyprus	-2.9	San Marino	-50.7
	Switzerland	-2.8	Greece	-18.8
	Spin (total)	-2.8	Denmark	-11.9
	Bulgaria	-2.4	Croatia	-10.2
	Hungary	-2.3	UK: Northern Ireland	-9.7
	Spain (State Adm.)	-2.2	Netherlands	-9.5
	UK : Scotland	-2.0	Lithuania	-8.8
	Armenia	-1.7	Romania	-8.6
	Liechtenstein	-1.3	Poland	-8.3
	Serbia	-1.2	Slovenia	-8.2
	Slavak Republic	-1.1	Latvia	-7.0
	UK: England & Wales	-0.9	Iceland	-7.2
	Austria	-0.2	Estonia	-6.6
	Portugal	2.4	BiH: Rep. Srpska	-6.3
	Montenegro	3.9	Spain (Catalonia)	-6.1
	Azerbaijan	4.6	Russian Federation	-6.0
	Moldova	9.2		
	Albania	10.3		
	Czech Rep.	11.4		
	Turkey	11.6		
	The FYRO Macedonia	12.0		
	Georgia	20.5		
	<b>Increase of more than 5%</b>		<b>Between -5% and +5%</b>	<b>Decrease of more than 5%</b>

# Looking ahead

- Research and policy project 2017 – 2019: **Understanding and reducing the use of imprisonment**
- Ten countries, five continents. Collaboration with NGOs, academics, legal practitioners, regional and international monitoring agencies
- November 2017 – event on female imprisonment and next edition World Female Imprisonment List

Ten jurisdictions from five continents since 1950s



# How do these ten rank globally?

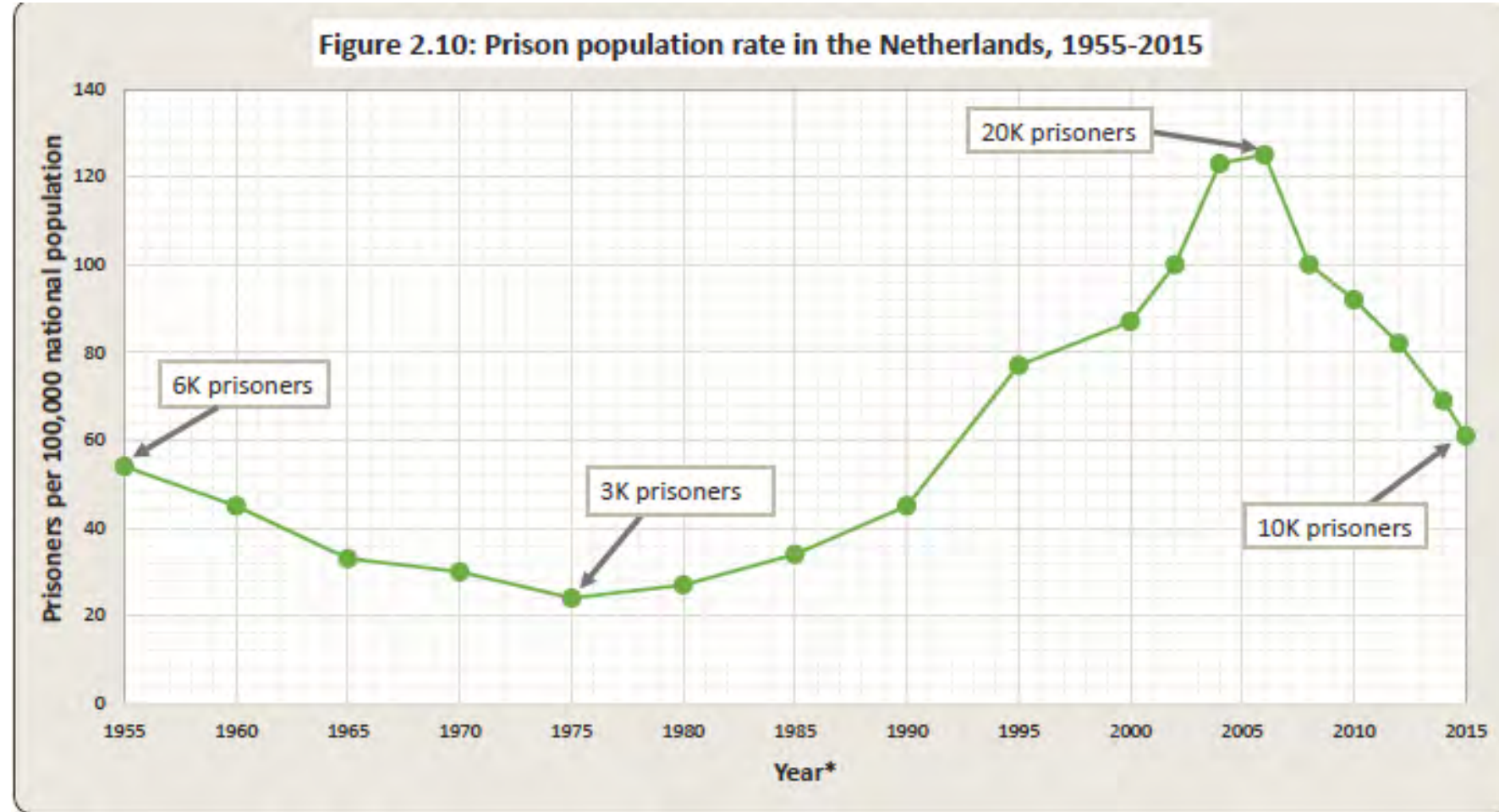
- Total prisoners
- PPR
- PTD
- Women prisoners

(Stats from ICPR's World Prison Brief 'Highest to Lowest' tables as at February 2017)

Prison population total (223 jurisdictions ranked)	Prison pop. rate – per 100,000 national pop. (221 jurisdictions ranked)	% pre-trial/remand prisoners (216 jurisdictions ranked)	% women prisoners (217 jurisdictions ranked)
Highest: <b>USA (2,145,100)</b>	Highest: Seychelles (799)	Highest: Libya (90%)	Highest: Hong Kong (20.5%)**
4. Brazil (622,202)	2. <b>USA (666)</b>		
5. India (419,623)	10. Thailand (428)		11. Thailand (13.6%)
6. Thailand (289,675)		18. India (67%)	18. <b>USA (9.7%)</b>
11. South Africa (161,984)			29= Australia (8.0%)
17. E & W (85,188)			40= Hungary (7.3%)
33. Kenya (57,000)	32= Brazil (307)		
	38= South Africa (291)		
46. Australia (39,152)			
70. Hungary (18,208)		69. Kenya (40%)	66. Brazil (6.0%)
	77. Hungary (186)	77. Brazil (36%)	77= Netherlands (5.7%)
91. Netherlands (10,274)	92= Australia (162)	97. Australia (31%)	
	103= E & W (145)	100= Netherlands (30%)	100= E & W (4.6%)
		107. South Africa (28%)	113= India (4.3%)
	131= Kenya (121)		
		140. Hungary (21%)	
		142= Thailand (20%)	142= Kenya (3.4%)
		144. <b>USA (20%)</b>	
	184. Netherlands (61)		176= South Africa (2.6%)
		191. E & W (11%)	
	213= India (33)		
Lowest: San Marino (2)	Lowest: C. Af. Rep. (16)	Lowest: Tuvalu (0%)	Lowest: several (0%)

- Welfare provision, equality, respect for difference
- Justice policies. 1947 to mid-1970s, decarceration strategy, focus on humane conditions
- Penitentiary Principles Act 1953, re-socialisation
- White Papers, 1985: *Society and Crime*. And 1990 *Law in motion*
- 1990 to 2005 – 200% rise in prisoner population rate
- 2006 to present – shift back to low rate

## The Netherlands



- For comprehensive data and regular news on the world's prison systems, visit ICPR's World Prison Brief website.  
[www.prisonstudies.org](http://www.prisonstudies.org)
- Further reading:
  - *Imprisonment Worldwide* (Coyle A, Fair H, Jacobson J, Walmsley R. Policy Press, June 2016)
  - *Prison: Evidence of its use and over-use from around the world*, Report by Jacobson J, Heard C, Fair H, Institute for Criminal Policy Research (first output of our 10 country project), available from our website

[c.heard@bbk.ac.uk](mailto:c.heard@bbk.ac.uk)

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# Prison alternatives: a paradigm shift

*Nuno H. Pontes*

*Researcher on prison issues*

*Trier, 1-2 June 2017*



## The European Prison Observatory

- **Italy**- Associazione Antigone
- **France** – section française de l’Observatoire International Des Prisons
- **Greece** – Special Account for Research Funds, Democritus University of Thrace, Department of Social Administration and Political Science (EL DUTH)
- **Italy** – Università degli Studi di Torino Observatoire international des prisons
- **Latvia** – Latvijas Cilvēktiesību centrs.
- **Poland** – Helsinki Foundation for Human Rights
- **Portugal** – Instituto Universitário de Lisboa (ISCTE-IUL)
- **Spain** – Observatorio del Sistema Penal de los Derechos Humanos de la Universidad de Barcelona
- **United Kingdom** – Centre for Crime and Justice Studies (ISTD)

## Alternatives to Imprisonment

- EPO project 2014-16
- Focused on relationship between prison and alternatives
- Aimed to explore the extent to which the rise in the use of alternatives to incarceration in Europe can be related a decrease in the use of prison sentences.
- The study did not produce evidence of a connection between the development of alternative sanctions and a decrease in prison population rates.

## Alternatives to Imprisonment

- The use of alternative sanctions seems to be strongly influenced by the country's historical context and political climate.
- This is particularly true in the era of mass incarceration, where the introduction of alternative sanctions did not produce a decrease of prison population.
- On the contrary, in some countries, we found that the increase of alternative sanctions is associated with an increase of prison population.

## **Alternatives to Imprisonment**

Our project found:

- Substantial growth in the use of community sanctions in the decade preceding the study took place alongside high – and, in most cases, growing – prisoner numbers.
- Community sanctions are mainly being used as a way to control and punish rather than as rehabilitative, supportive, individualised intervention programmes.
- The policy emphasis is increasingly on risk-management.
- Prison is often the automatic sanction if a community sentence requirement is breached.

## **Alternatives to Imprisonment**

- Professionals are frustrated by policies which tie their hands and/or by their funds being cut, finding themselves unable to support those placed under their care and supervision.
- Alternatives often become just another extension of the 'Prison Pipeline'

## What can work?

[www.prisonobservatory.org/upload/Good%20practice%20handbook%20AS.pdf](http://www.prisonobservatory.org/upload/Good%20practice%20handbook%20AS.pdf)

# Alternatives to imprisonment in Europe: A handbook of good practice

*Catherine Heard*

European Prison Observatory. Alternatives to detention



With financial support from the  
Criminal Justice Programme of  
the European Union



## What can work?

- The study found examples of good practice showing that a different approach is possible.
- Community measures and other alternatives can be used to divert people from prison and punishment by improving access to treatment or social support.
- Some countries have developed approaches that aim to defer or cancel the criminal justice process altogether.
- Mental health and drug dependency are particularly obvious areas where more can be done to decriminalise people with social problems, divert them from punishment and imprisonment, and thereby downsize criminal justice.

## **Manifesto for a New Penal Culture**

<http://www.prisonobservatory.org/upload/Manifesto%20English%20variation%202.pdf>

## **Alternatives - Out of the shadow**

[http://www.prisonobservatory.org/index.php?option=com\\_content&view=category&layout=blog&id=14&Itemid=130](http://www.prisonobservatory.org/index.php?option=com_content&view=category&layout=blog&id=14&Itemid=130)



## The challenge

How do we move from the present paradigm, where Alternatives, to the degree that they exist, do so firmly in the shadow of the prison, to a new, inverse, paradigm, where prison, to the degree that it must exist, does so firmly in the shadow of what we now think of as Alternatives?

## **Towards a new penal cultural – a political strategy**

**Saving money**

**Fighting crime**

## **Prison:**

- ✧ Little or no deterrent effect
- ✧ 'Universities of crime'
- ✧ Sever family ties
- ✧ Stigmatizing
- ✧ Dehumanizing
- ✧ Psychologically damaging
- ✧ Adaptive aggressiveness
- ✧ Alienation: psychological, social, practical
- ✧ Disempowering
- ✧ Long-term unaccountability
- ✧ Extremely costly

**Convictions**

**Prosecuted**

**Resulting in arrest**

**Investigated**

**Recorded by the police**

**Reported or identified 'crimes'**

**Unknowable numbers of total 'criminal' acts**

- ✧ If the criminal justice system is to aim for a truly corrective social role, it will require the participation of those who are at the centre of the challenge: the perpetrators.
- ✧ The courts must be empowered to assume a diagnostic role for existing and developing problematic social dynamics

Models for how this might be done is the discussion we should all be having. The EPO has the outline of an approach in its Manifesto. We, my colleagues and I at ISCTE, have a more extensive proposal which I will be glad to share with anyone interested in entering the discussion. My contact:

[nhlmp@iscte.pt](mailto:nhlmp@iscte.pt)

## EPO 2017-2019


### *Prison De-radicalisation Strategies, Programmes and Risk Assessment Tools in Europe*

The project will evaluate the strategies and programmes aiming to prevent, deter and counter radicalization in prison, including detention centres. We will identify and analyse risk assessment tools and good practices regarding new or existing de-radicalization, disengagement and rehabilitation programmes.

Thank you for your attention

*Nuno H. Pontes*  
*Researcher on prison issues*  
*Trier, 1-2 June 2017*






Trust

Mutual recognition


Fundamental Rights



**FRA**  
EUROPEAN UNION AGENCY  
FOR FUNDAMENTAL RIGHTS


An overview of findings from two FRA reports:  
Criminal detention and alternatives  
Rights of suspected and accused persons

Presentation at ERA's:  
'Improving Detention Conditions at EU Level'



Co-funded by the Justice Programme of the  
European Union 2014–2020

Dr Jonas Grimheden  
Senior Policy Manager



**FRA**  
EUROPEAN UNION AGENCY  
FOR FUNDAMENTAL RIGHTS

Handbook on European law  
Relating to access to justice


**Trust**

Mutual recognition

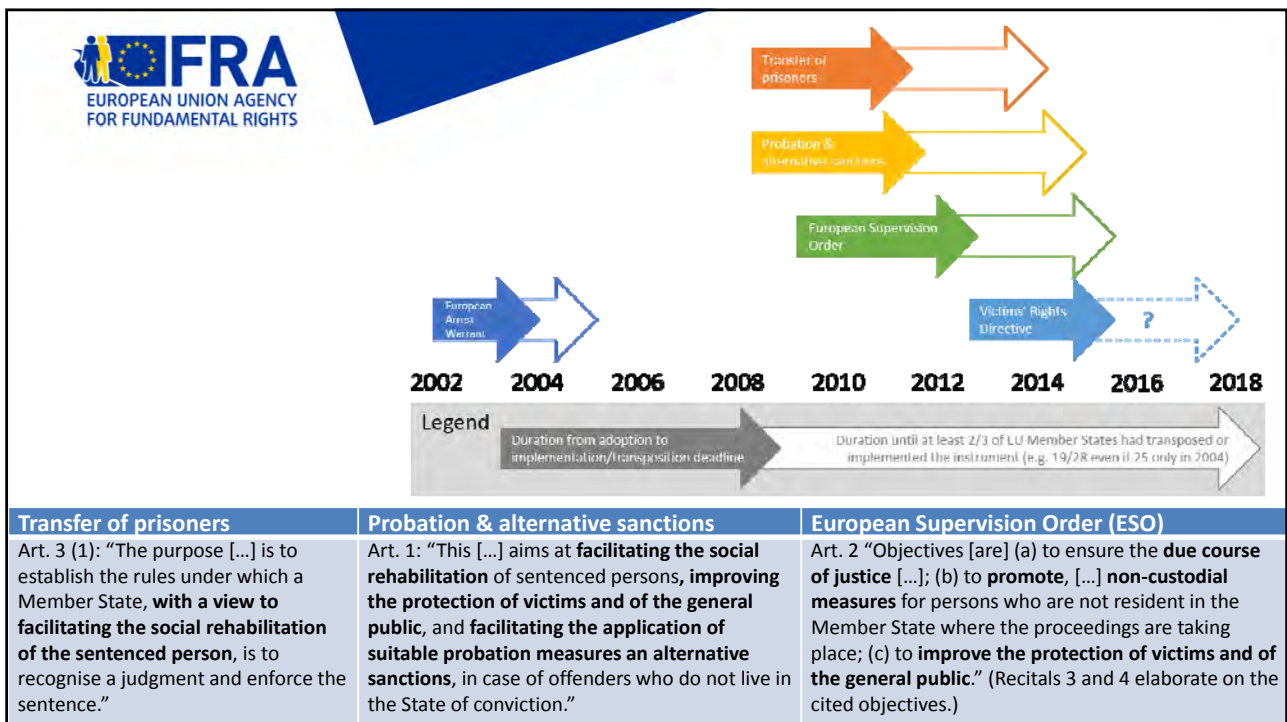
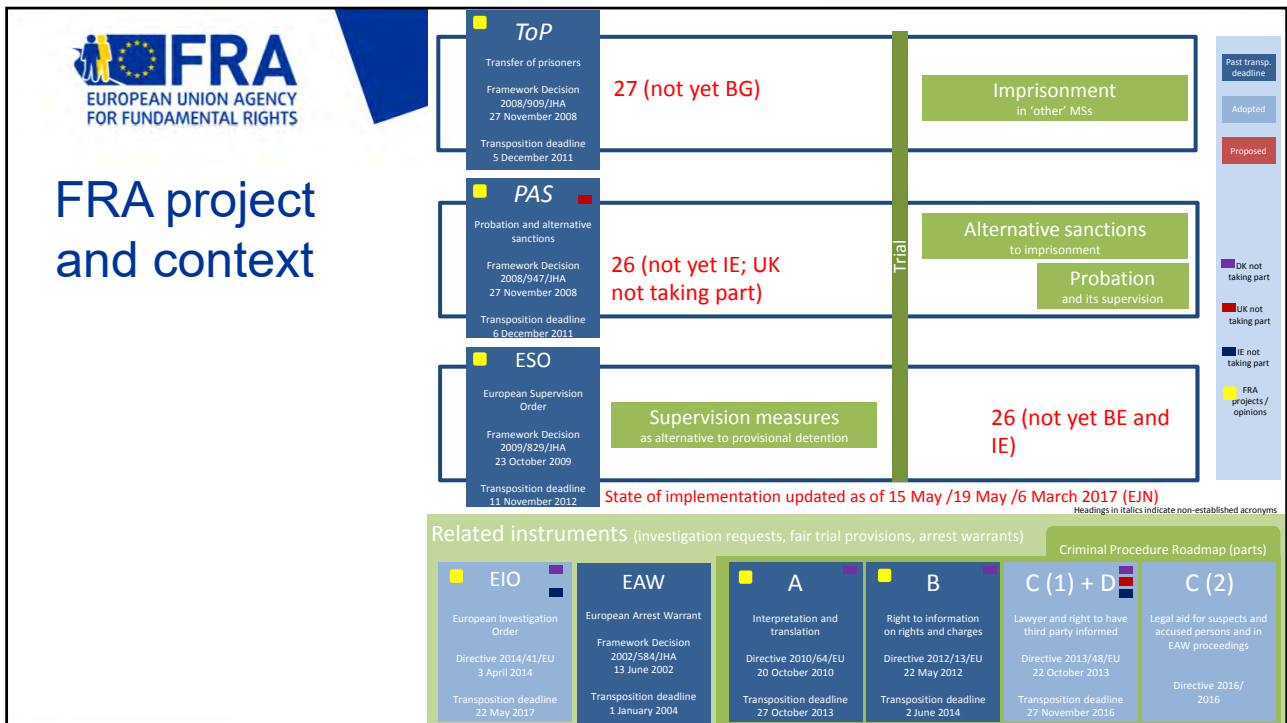
Criminal detention and alternatives in the EU: fundamental rights aspects in pre- and post-trial cross-border transfer procedures

Fundamental Rights

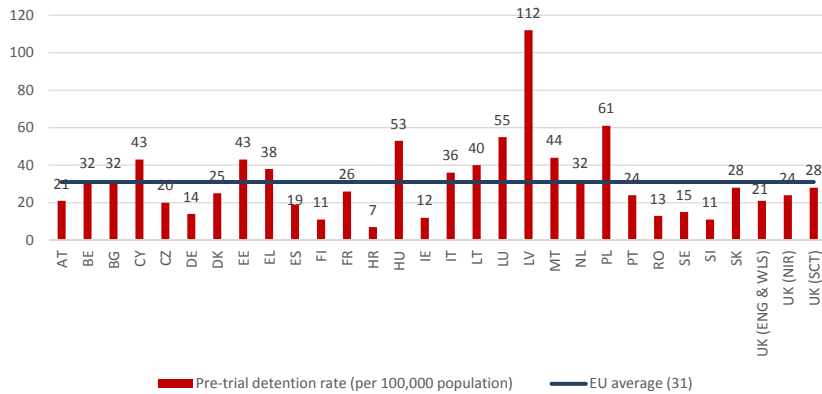
Rights of suspected and accused persons across the EU: translation, interpretation and information



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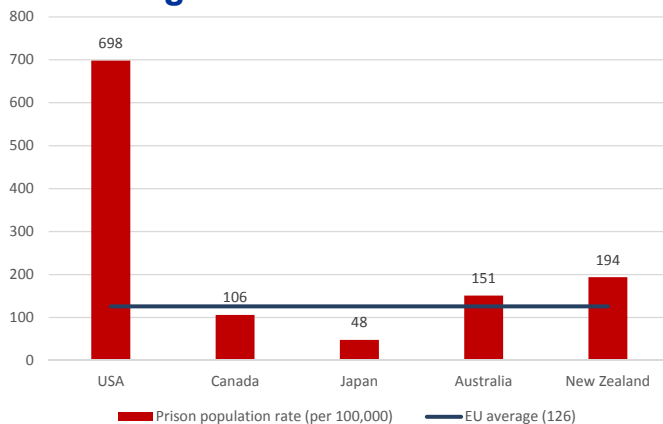


## Detention rate (pre-trial) per 100,000 population in the EU Member States (UK by its three main parts), compared to EU average



Source: Institute for Criminal Policy Research (ICPR), University of London, [World Pre-trial/Remand Imprisonment List \(2nd ed.\)](#)

## Detention rate (pre- and post-trial) per 100,000 population in select states with GDP per capita similar to that of the EU, compared to EU average



Source: Institute for Criminal Policy Research (ICPR), University of London, [World Prison Population List \(eleventh edition\)](#). The information comes largely from national prison administrations or responsible ministries. The data are for the latest reference year available when the statistics were published in October 2015.

## Number of detainees (pre- and post-trial) who are from another EU Member State, by EU Member State



Some 30,000 across the EU – roughly 5 % of total in detention

‘customer base’ + not detained

Note: Data for DE, EL and HU are from Space 1, 2012; no data are available for BG. Information for UK specified separately for each of its three main regions.

Source: Council of Europe, [SPACE I](#), 2014, Table 4

## Alternatives to pre-trial detention available in EU Member States

	Restriction on movement	Communication restrictions / removal orders	Electronic Monitoring	Duty to report / mandatory registration	Supervision	Social rehabilitation	Medical rehabilitation	Financial Surety	Seizure of documents	Other restrictions on liberties
AT	✓	✓	✓	✓	✓		✓	✓		
BE	✓	✓	✓		✓		✓	✓		
BG	✓			✓				✓		
CY		✓						✓		
CZ	✓	✓			✓					✓
DE	✓	✓	✓	✓	✓			✓		
DK	✓	✓			✓					
EE	✓	✓		✓			✓			
EL	✓	✓	✓					✓		

Article 8 (1) of the Framework Decision on the ESO lists the pre-trial supervision measures to which it applies. These are:

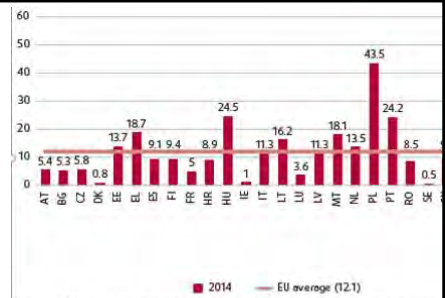
- Obligations to inform authorities of any change of residence
- Restrictions in movement, in particular in entering certain places or an obligation to remain at a specified place, as well as limitations on travelling across state borders
- Restrictions on contacting certain persons.

Additionally, according to Article 8 (2), following notification to the Council, states may also choose to apply the ESO to other measures, for example:

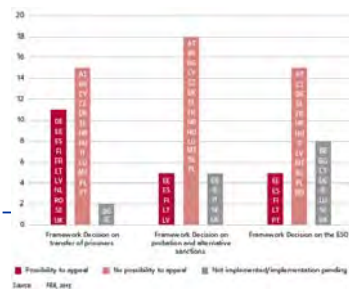
- Restrictions on engaging in certain activities
- Restrictions on driving a vehicle
- Obligations to deposit a certain sum of money
- Obligations to undergo certain treatment
- Restrictions on contacting specified objects.

## Concerns

- Definitions 'home country' v rehabilitation
- Rehabilitation seen as a rather narrow concept
  - Continuity of level of security 'gained', training, education, medical/psychological treatment, etc – for rehabilitation (form with multiple choice needed?)
  - Social inquiry report (e.g. BE)
- Level of understanding of 'transferred to what'
  - Consent / information (as well as, e.g., appeal)
  - Prison conditions / calculations of time, benefits, etc (909)
  - Language
- Transfer – information to victims of crime?
  - Victims chose what to be informed about (SE)
- Persons in situations of vulnerability
- Data collection
- Translation requirements, response time, communication (E-tools – CoE proposal for secure file transfer)
- Accessibility of information and data (as required by *Aranyosi & Căldăraru*)



Note: Data are not available for Belgium and Germany; for Luxembourg, the latest available data are from UK specified separately for each of its three main regions.  
Source: UNODC (2014), *Juveniles held*



Source: REA, 2013

## Opinions – reduced pre-trial detention

- Implementation and application of the EU instruments and their potential, requires the following
  - Pre-trial detention to be reduced in many Member States
    - Better compliance with international human rights standards (exception rather than the rule – last resort; not sentenced persons)
  - Removing overcrowding can lead to improved prison conditions
  - Interests of society
    - Financial costs of detention
    - Poorly rehabilitated former detainees – social rehabilitation

## Opinions – alternatives to detention

- **Greater use of alternatives to detention**
- **Effective implementation requires a more harmonised approach across the EU**
  - when detention is used
  - what alternatives to detention are in place
  - when alternatives are used
  - what social rehabilitation entails
- **This would also reinforce mutual trust**



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## Opinions – prohibited transfer when FR at risk

- **Availability of EU funds could be linked to recommendations by monitoring mechanisms**
  - e.g. the European Committee on the Prevention of Torture (CPT) – on detention conditions
- **Realistic opportunities for addressing identified shortcomings with priority**

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## Opinions – prohibited transfer when FR at risk

- Prohibited from transferring when fundamental rights at risk
- Individual situations evaluated (esp. when systemic shortcomings)
- Need for more easily available information on detention conditions (as well as on alternatives)
  - Including more objective, accessible and operational information
  - Could be coupled with indicators on conditions and benchmarks
  - Greater clarity on when transfers could be made without fundamental rights concerns
- Useful tool for judges and others who need to decide

**FRA requested to look into this by the EC (2017 small project on criminal detention – conditions and monitoring)**  
**Cooperation with CoE and EC in relation to NPMs**



08/04/2016  
 This opinion underlines the importance of drawing on existing data and information in any assessment of the values in Article 2 TEU, and outlines how this could be done.

Ensuring cross-border justice for all in the EU:  
 sharing practices and experiences from the ground, Bratislava 9–10 November

### Conclusions

1. Three FDs similar requirements as the EAW
2. Significant differences in extent of detention but also quality and of social rehabilitation
3. Objective criteria needed – ‘tool’ and incentives
4. Potential to improve fundamental rights with the EU instruments
5. Mutual recognition – trust – fundamental rights

**Mutual recognition**

**Fundamental Rights**

## Handbook on access to justice

- FRA-Council of Europe (European Court of Human Rights) with CEPEJ and Court of Justice of the EU
- In print and online in 22 languages
- Content includes:
  - What and how, independence and impartiality, legal aid, assistance, effective remedy, obstacles, length of proceedings, persons with disabilities, victimse-justice, environmental, detention (pp. 163–172)



<http://fra.europa.eu/en/publication/2016/handbook-european-law-relating-access-justice>

## Criminal justice

Criminal procedures roadmap

<p><b>A</b></p> <p>Interpretation and translation</p> <p>Directive 2010/64/EU 20 October 2010</p> <p>Transposition deadline 27 October 2013</p>		<p><b>B</b></p> <p>Right to information on rights and charges</p> <p>Directive 2012/13/EU 22 May 2012</p> <p>Transposition deadline 2 June 2014</p>		<p><b>C (1) + D</b></p> <p>Lawyer and right to have third party informed</p> <p>Directive 2013/48/EU 22 October 2013</p> <p>Transposition deadline 27 November 2016</p>		<p><b>E (1)</b></p> <p>Special safeguards for children</p> <p>Directive 2016/800 11 May 2016</p> <p>Transposition deadline 11 June 2019</p>		<p><b>F</b></p> <p>Green paper on detention</p> <p>COM(2011) 327 final 14 June 2011</p>	
<p><b>Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, OJ C 295/1, 4 December 2009, adopted by the Council on 30 November 2009, and incorporated into the Stockholm Programme</b></p>		<p><b>C (2)</b></p> <p>Legal aid for suspects and accused persons and in EAW proceedings</p> <p>Directive 2016/1919 26 October 2016</p> <p>Transposition deadline 25 May 2019</p>		<p><b>E</b></p> <p>Presumption of innocence presence at trial,</p> <p>Directive, 2016/343 9 March 2016</p> <p>Transposition deadline 1 April 2018</p>		<p><b>E (2)</b></p> <p>Recommendation on procedural safeguards for vulnerable persons</p> <p>C(2013) 8178 27 November 2013</p>			
		<p><b>C (3)</b></p> <p>Recommendation on legal aid</p> <p>C(2013) 8179 27 November 2013</p>							
<p><b>EAW</b></p> <p>European Arrest Warrant</p> <p>Framework Decision 2002/584/JHA 13 June 2002</p> <p>Transposition deadline 1 January 2004</p>		<p><b>ToP</b></p> <p>Transfer of prisoners</p> <p>Framework Decision 2008/909/JHA 27 November 2008</p> <p>Transposition deadline 5 December 2011</p>		<p><b>PAS</b></p> <p>Probation and alternative sanctions</p> <p>Framework Decision 2008/947/JHA 27 November 2008</p> <p>Transposition deadline 6 December 2011</p>		<p><b>ESO</b></p> <p>European Supervision Order</p> <p>Framework Decision 2009/829/JHA 23 October 2009</p> <p>Transposition deadline 11 November 2012</p>		<p><b>EIO</b></p> <p>European Investigation Order</p> <p>Directive 2014/41/EU 3 April 2014</p> <p>Transposition deadline 22 May 2017</p>	
						<p><b>CoPC</b></p> <p>Freezing and confiscation of tools/proceeds of crime</p> <p>Directive 2011/42/EU 3 April 2014</p> <p>Transposition deadline 4 October 2016</p>		<p><b>EPPO</b></p> <p>Establishment of the European Public Prosecutor's Office</p> <p>Draft regulation COM(2013)534 final, 17 July 2013</p>	

Past transp. deadline
Adopted
Proposed
Recommendations
Green paper
DK not taking part
UK not taking part
IE not taking part
FRA projects
FRA opinions
Headings in italics indicate non-established acronyms



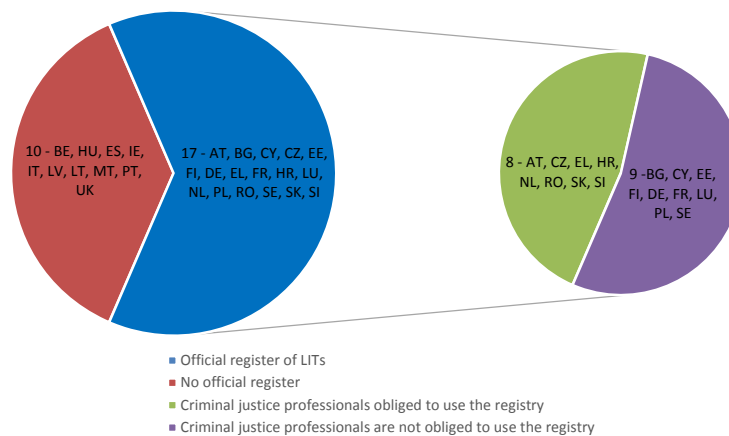
## Interpretation/translation & Information

- Timeline for interpretation and translation
- Notion of ‘essential documents’
- Communication between suspected or accused persons and their legal counsel
- Quality requirements of interpretation and translation services
- Available remedies

A	B
Interpretation and translation	Right to information on rights and charges
Directive 2010/64/EU 20 October 2010	Directive 2012/13/EU 22 May 2012
Transposition deadline 27 October 2013	Transposition deadline 2 June 2014

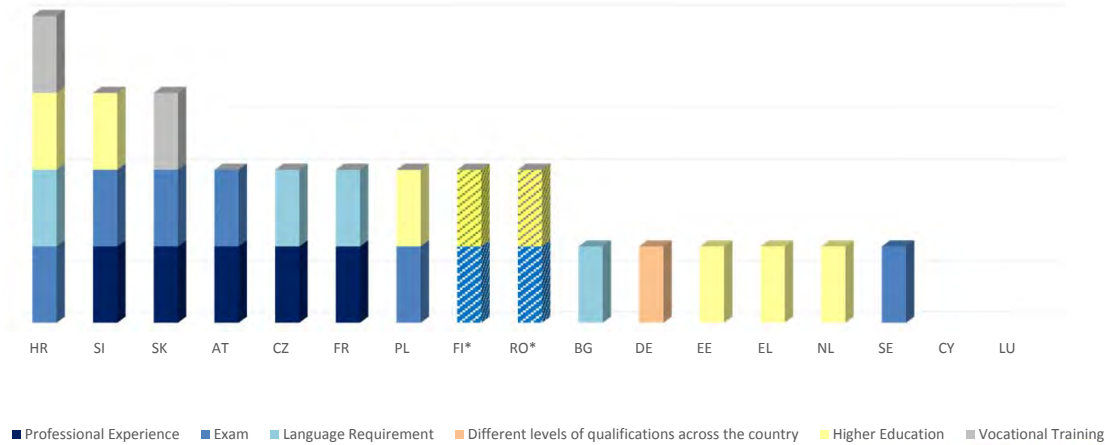
17

## Quality requirements: official registers



18

## Official registers: minimal requirements

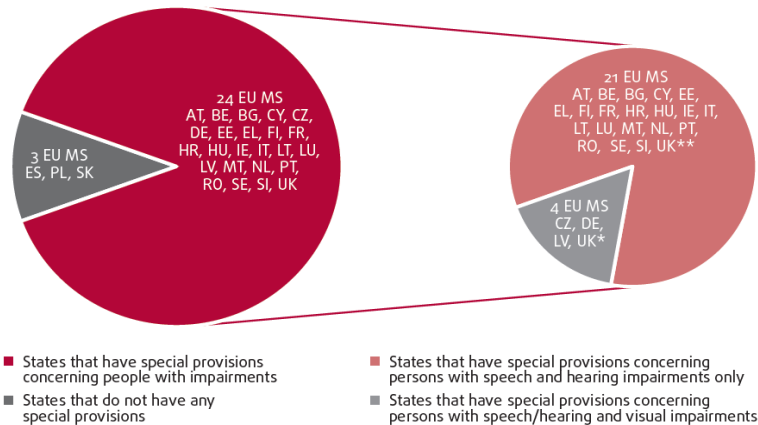


## Field perspectives

- *“Interpreters in Ireland who work in the courts are people who speak English and another language and who are willing to work for €15 per hour in courts or for €18 in police stations and not be paid for transport or travel time. They are not tested in any way to establish if they can actually interpret. There is no training and no testing. Interpreters are provided, but what use is an interpreter who can’t interpret?”*

## Legal provisions on interpretation and translation for persons with speech, hearing or visual impairments in EU Member States

Denmark is not bound by either directive. In the United Kingdom, the rules differ in *England and Wales* and in *Scotland and Northern Ireland*, so the UK is shown twice.  
\* UK – Scotland and Northern Ireland.  
\*\* UK – England and Wales.



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## Opinions – quality interpretation and translation

- Mandatory up to date registers
- Mandatory professional requirements and development (common EU curricula; vulnerabilities)
- Guidance and rules on alternative solutions to interpretation and translation (ICT, cross-border)
- Associations of interpreters and translators – ethical codes / codes of conduct
- Working conditions

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## Opinions – essential list of documents

- Clear list (recent CJEU AG Opinion) and exceptions, more specific than prescribed in Art. 3 of the Directive

## Opinions – clarity on availability; confidentiality

- Availability of interpretation and translation communicated clearly at outset
- Ensure confidentiality of state-appointed interpreters or translators



Co-funded by the Justice Programme of the  
European Union 2014–2020

**Thank you!**

[Jonas.Grimheden@fra.europa.eu](mailto:Jonas.Grimheden@fra.europa.eu)

[fra.europa.eu](http://fra.europa.eu)



# Improving detention conditions at EU level

ERA, Trier, 1-2 June 2017



Co-funded by the Justice Programme of the European Union 2014-2020

# EU and detention

- ✚ Until now, detention conditions primarily a responsibility of Member States
- ✚ Prison overcrowding: SPACE statistics 2015: 10 out of 28 EU MS have a prison occupancy rate of more than 100% Use of pre-trial detention, non-residents particularly affected

## EU Member States and detention

- + European Prison Rules non-legally binding
- + *Ex post facto* mechanism
- + Number of judgments highlighted deficiencies in some prisons within the EU inter alia, the judgments in the cases *Peers v. Greece* (19 April 2001), *Orchowski v Poland* (22 January 2010) and pilot judgments *Torregiani v. Italy* (8 January 2013), *Neshkov and others v. Bulgaria* (27 January 2015), *Varga and others v. Hungary* (10 March 2015), *Rezmives and others v. Romania* (25 April 2017)

## EU interest in this area

- ✚ Can create obstacles to criminal law cooperation, in particular when judges are obliged to refuse a transfer under Article 19 (2) EU Charter:

*No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*

- ✚ Framework Decisions on Transfer of Prisoners (2008/909/JHA) and European arrest warrant EAW (2002/584/JHA)
- ✚ Preliminary questions Court of Justice of the EU: C-404/15 and C-659/15 PPU (Aranyosi and Caldaru) and C-496/16 (Aranyosi II)



## EU interest in this area

- ✚ European Parliament called for a legislative proposal on the rights of persons deprived of their liberty to ensure pre-trial detention remains an exceptional measure, used in compliance with the POI and right to liberty in 2011 and 2014
- ✚ 2017: European Parliament report on Prison systems and conditions (rapporteur Joëlle Bergeron) 2015/2062 (INI)
- ✚ Many parliamentary questions, citizens' letters, petitions and complaints



# COM Green Paper on detention June 2011

- ✦ 81 replies (21 Member States, civil society, international organisations, NGOs)
- ✦ Summary of replies published on website DG Justice: <http://ec.europa.eu/justice/newsroom/criminal/opinion/>
- ✦ Main topics: pre-trial detention and detention conditions



# EU legislation in the field of detention

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments imposing custodial sentences or measures involving deprivation of liberty (Transfer of Prisoners) had to be implemented by 5 December 2011

Transfer of prison sentences: conditional release falls under Probation and Alternative Sanctions

Example: Peter is a national of Member State A and habitually lives there. He is convicted of an offence in Member State B and is sentenced to 2 years in prison. The authorities of Member State B may return him to Member State A to serve the sentence without seeking his consent.



# EU legislation in the field of detention

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (Probation and Alternative Sanctions) had to be implemented by 5 December 2011

Example: Anna is a national of Member State A but is on holiday in Member State B. She is convicted of an offence in Member State B and sentenced to carry out community service in lieu of a custodial sentence. She can return to her home Member State and the authorities of that Member State are obliged to recognise the community sentence and to supervise Anna's execution of it.



## EU legislation in the field of detention

Council Framework Decision 2009/829/JHA of 23 October 2009 on the application of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (European Supervision Order) had to be implemented by 1 December 2012

Example: Hans, who is a resident of Member State A is arrested and charged with an offence in Member State B. His trial will not start for 6 months. If he was a resident of Member State B, the judge would be inclined to release him on bail, with a condition of reporting to the police station, but the judge is reluctant to do so because Hans lives in another Member State and will return there pending trial. The judge fears that Hans will not return and may even flee. Under the ESO, the judge can allow Hans to return home can impose a reporting condition, and can ask the authorities in Member State A to ensure that Hans does report to the police station in accordance with the order of the court in Member State B.



# Table on State of Play implementation Framework Decisions

FD 909 – Dec 2011 (Transfer of Prisoners)	FD 947 – Dec 2011 (Probation and Alternative Sanctions)	FD 829 – Dec 2012 (European Supervision Order)
26 Member States	26 Member States	26 Member States
Not yet implemented BG and IE	Not yet implemented IE UK opt-out	Not yet implemented BE and IE

# COM actions on implementation

- + Poor state-of-play implementation
- + Active role of COM: 5 implementation Workshops over the past 5 years
- + Implementation report 3 FDs, 5 February 2014 (*COM(2014) 57 final and SWD(2014) 34*)
- + Infringement actions from 1 December 2014: EU pilot for non-communication
- + Preparation of Handbook FD 909 (Transfer of Prisoners) and FD 947 (Probation and Alternative Sanctions)
- + Experts' meeting EuroPris (FD 909) and CEP (FD 947 and 829)

# Pre-trial detention

- ✚ Impact Assessment Study PTD (finalised 2016)
- ✚ PTD is too often automatic and that many courts are not willing to use alternative measures.
- ✚ The overuse of PTD partly explains the current overcrowding of prisons in Member States (in some MS PTD account for 50% of total prison population)
- ✚ Legislative instrument at this moment not opportune



# Detention conditions

- + Letter of 12 Member States asking COM to analyse the possibilities to fund the modernisation of the national penitentiary systems within the Multiannual Financial Framework 2014-2020
- + 2016: Close cooperation with Council of Europe
- + Creation of EU network of National Preventive Mechanisms (NPMs) monitoring detention conditions in Member States and SPACE Statistics

# Radicalisation

- ✚ High Level Conference Criminal Justice response to radicalisation, 19 October 2015
- ✚ Council Conclusions 20 November 2015
- ✚ JPEN Funds to speed up the setting-up of all the projects that are emphasised in the Conclusions: develop de-radicalisation and rehabilitation programmes in and outside prisons, risk assessment tools and training schemes in the Member States for all actors on the ground.

# Follow-up actions after Aranyosi

- + Roundtable on Detention, October 2016
- + Development of common indicators for information requests under Article 15(2) FD EAW
- + One-stop-shop database on detention conditions in the Member States in cooperation with FRA and CoE
- + Regular exchange of best practices on the execution of penal sanctions



Contact/Info:

European Commission  
DG Justice and Consumers  
Procedural Criminal Law

Tel.: +32-2 29 67530  
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## Good governance and supervision by inspecting authorities in relation to prison needs

*Academy of European Law  
Improving Detention  
Conditions at EU Level  
Trier, 1-2 June 2017*

Christiane Jesse  
Niedersächsisches Justizministerium

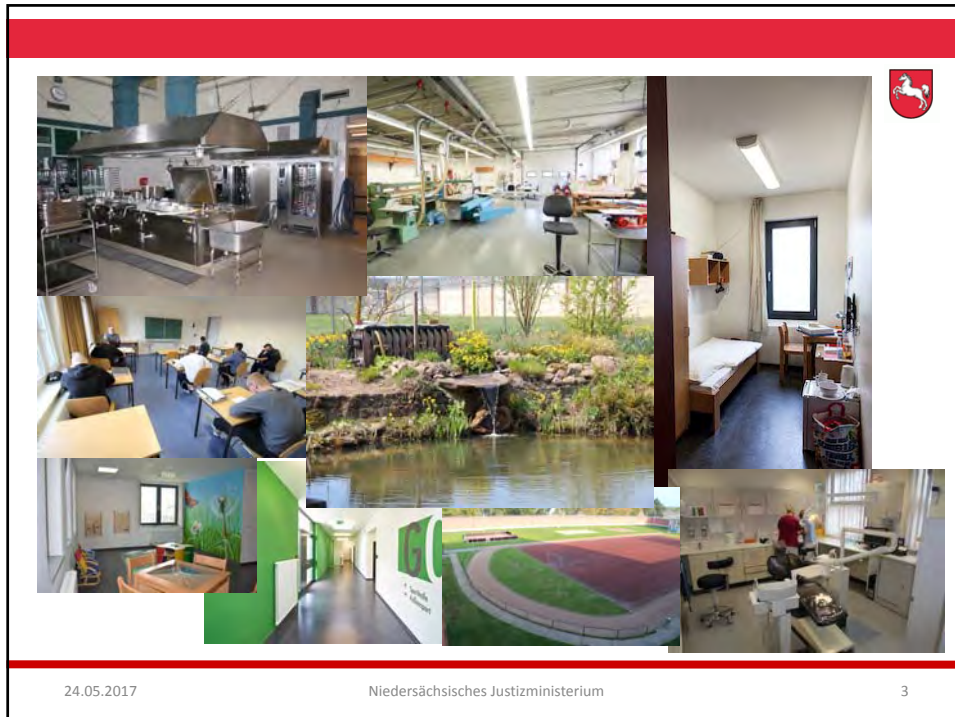


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## *What does good governance in prisons mean? Frame Conditions*

- Humane housing
- Sufficient employment and educational opportunities as well as
- Leisure and sport facilities for prisoners,
- time and adequate rooms for relatives and children,
- Radio, TV, telephone, newspapers,
- Good medical care,
- Support and criminal therapy,
- **Respectful** contact with prisoners and their relatives



*Good government of prisons needs good supervision by inspecting authorities*

- Fair contact to governors
- Delegation
- Annual negotiations about resources and aims
- Clear expectations and rules
- Good program for personal development for governors
- Transparency about the concept for inspecting the prisons (for example by a forwarded checklist)
- Regular meetings
- Participation in strategic planning
- Good mediation between penitentiaries and politics

Niedersächsisches Justizministerium

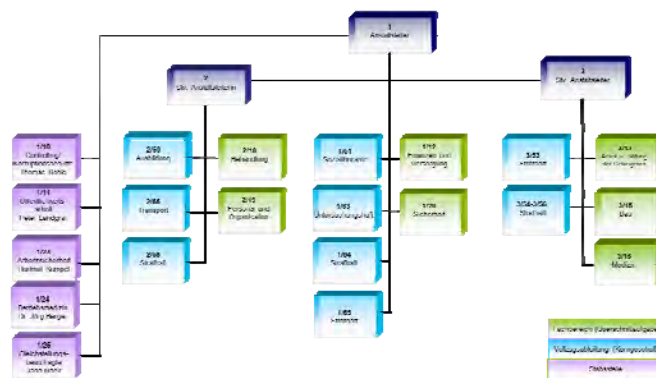
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## Good government Organization



- Clear organization and task assignment
- Reasonable and flat hierarchy,
- Manageable units and departments

## Organization



*Good government of prisons*

*Who is responsible?*



- Clear rules: who is allowed to decide which cases?
- Hierachy versus basic demokraty
- Delegate decisions as far as possible!
- 4 – eyes help to prevent corruption
- Systems of internal control

*Good government in prisons*

*Recruitment and training of staff*



- Careful recruitment based on a profile of requirements
- In accordance with the needs and aims of the institution: training of the staff „lifelong“
- Meaningful manning in accordance with the taska of the organization
- Further education „lifelong“



*Good government in prisons*  
*Concept and instruments for leadership*



- Development of aims and strategy
- Role
- Transparency
- Information (meetings and rules)
- Delegation
- Participation
- Respectful contact with staff members
- Challenging , care and feedback
- Control and controlling

*Thank you*  
*for your attention!*





## Gute Führung von Gefängnissen und Aufsicht durch Aufsichtsbehörden"

*Tagung der Europäischen Rechtsakademie  
Verbesserung der  
Haftbedingungen auf EU-Ebene  
Trier, 1.-2. Juni 2017*

Christiane Jesse  
Niedersächsisches Justizministerium



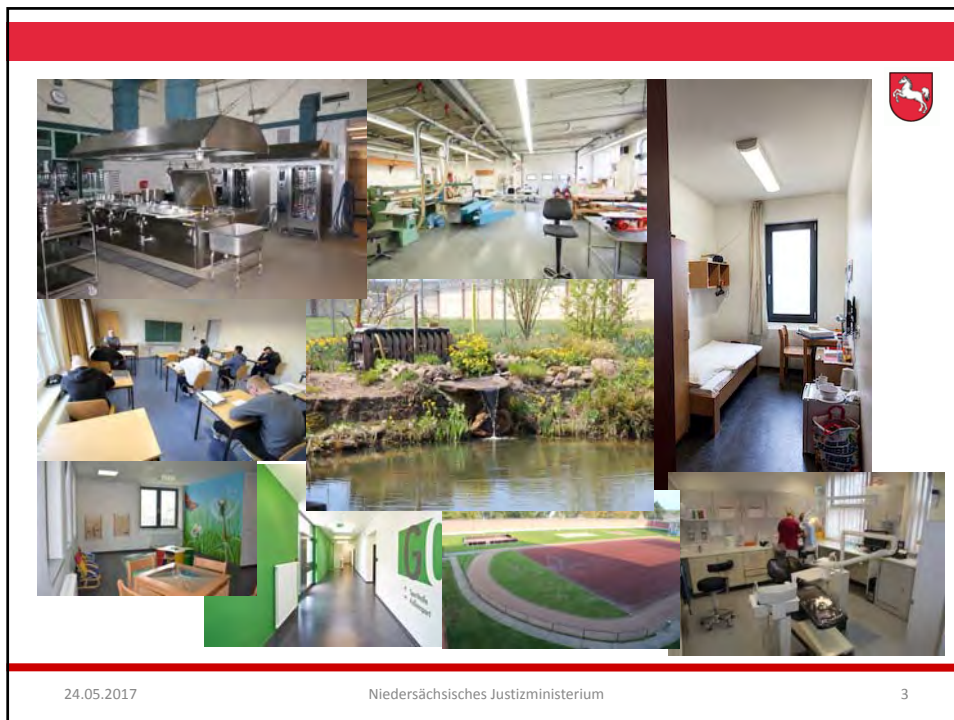
Ko-finanziert vom Programm "Strafjustiz" der Europäischen Union 2014-2020



## Was macht gute Führung von Gefängnissen aus? Rahmenbedingungen

Was alle Verantwortlichen gemeinsam anstreben sollten:

- menschenwürdige Unterbringung der Gefangenen,
- ausreichende Beschäftigungsmöglichkeiten,
- Bildungsmöglichkeiten und
- Freizeit- und Sportangebote für Gefangene,
- ansprechende und angemessene Besuchsmöglichkeiten für Familien und Kinder,
- Radio, Fernsehen, Telefon, Zeitschriften,
- gute medizinische Versorgung,
- Betreuung und therapeutische Angebote,
- **respektvoller**, an den Vollzugszielen orientierter Umgang mit Gefangenen und Besucherinnen und Besuchern.



### *Gute Gefängnisführung braucht verlässliche und gute Aufsicht*



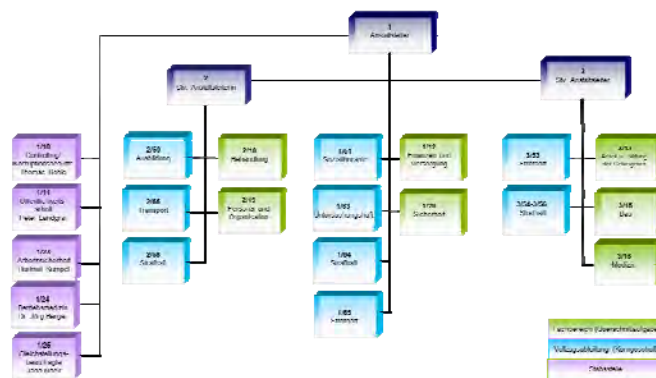
- Begegnung auf Augenhöhe im Umgang mit Anstaltsleitungen
- Delegation von Verantwortung
- (jährliche) Ziel- und Ressourcenverhandlungen und –vereinbarungen
- klare Erwartungen und Vorgaben
- gute Personalentwicklung für Anstaltsleitungen
- transparentes Aufsichtssystem zum Beispiel anhand einer vorher übermittelten Checkliste
- regelmäßige Dienstbesprechungen
- Beteiligung an strategischer Ausrichtung
- gute Vermittlung zwischen Politik und Vollzugseinrichtungen

## Was macht gute Führung von Gefängnissen aus? Organisation



- klare Organisation und Aufgabenzuschreibung (Organigramm und Geschäftsverteilung)
- sinnvolle und möglichst flache Hierarchie,
- überschaubare und „führbare“ Einheiten (Abteilungen, Querschnittsaufgaben).

## Was macht gute Führung von Gefängnissen aus? Organisation



*Was macht gute Führung von Gefängnissen aus?*  
*Verantwortung*



- klare Entscheidungsbefugnisse
- Hierarchie statt Basisdemokratie
- so weit wie möglich sollten Entscheidungen vor Ort getroffen werden,
- 4 – Augen - Prinzip in korrupsionsgefährdeten Bereichen
- Binnenrevision

*Was macht gute Führung von Gefängnissen aus?*  
*Personalauswahl und -ausbildung*



- sorgfältige Personalauswahl, die an einem Anforderungsprofil orientiert ist (Fachkompetenzen, persönliche und soziale Kompetenzen)
- an den Zielen der Organisation ausgerichtete gute Aus- und Fortbildung des Personals
- sinnvolle Personalausstattung, die in Einklang mit den Aufgaben der Organisation steht
- Weiterbildung, lebenslanges Lernen

*Was macht gute Führung von Gefängnissen aus?  
Führungsverständnis und Führungsinstrumente*



- Zielbildung und Strategie
- Rollenverständnis
- Transparenz
- Information horizontal und vertikal  
(verbindliches Konferenzsystem und Regelwerk)
- Delegation
- Beteiligung – aber keine Scheinbeteiligung
- Begegnung auf Augenhöhe
- Die drei F`s der Mitarbeiterführung: fordern,  
fördern und Feedback
- Kontrolle und Controlling

*Vielen Dank für  
Ihre Aufmerksamkeit!*





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European Union  
2014-2020

# Education in Prisons

## - some best practices in Sweden

Anders Backman  
ERA conference 317DT03/ek Improving Detention Conditions at EU Level, in  
Trier on 1-2 June 2017

## Content

- Background, framework
- Challenges
- Measures to be taken
  
- The Swedish Education model
- Conclusions and way forward

## Why Education in Prison?

**No person must be denied the right to education**

*The European Convention for the Protection of Human Rights and Fundamental Freedoms*

**Every prison is to ensure that each prisoner has the right to as comprehensive educational programs as possible, that satisfy their individual needs and preferences**

*Council of Europe: The European Prison Rules (2006)*

**All prisoners shall have access to education,...**

*Council of Europe: Education in Prison (1989)*

## If the student is transferred...

- what impact does it have on education in prison?



## Prison Education with a national organization

### Swedish Prison and Probation Service and Administration

- 32 custodies (1 600 a day)
- 47 prisons (3 800 a day)
- 34 probation offices (11 500 a day)
- In total about 17 000 a day
  
- 5% women
- 3% under 21
- 31% foreign citizenship



## Challenges for education in prisons in Sweden

- Almost 50 prisons spread over a big geographical area
- Capacity for 4 500 inmates a time (about 10 - 11 000 a year)
- Prisons dimensioned for 10 – 400 inmates
- Inmate age span from 18 years old and up
- From no completed education at all to university level
- ADHD, other serious mental problems, reading and writing disabilities....,

## Challenges for education in Swedish prisons

- Inmates with different languages (more than 100 nationalities)
- Sentences from some weeks up to life time
- Transfer of inmates between different prisons
  - planned as well as sudden
- Coming and leaving all year around
- No access to open Internet – access to some websites, “white list”
- Difficulties recruiting and keeping teachers

## Need for:

- Fully qualified teachers
- A wide range of courses
- All courses should be available from any prison
- All courses should be available all year around
- Creating a possibility to continue ongoing studies regardless of transfers
- Teachers who can continue to support a student throughout a course independently of where the student is

## Ways of achieving that?

- What subjects and levels should be provided? Why?
- How many teachers will be needed at each prison?
- How to organize education in prisons independent of time?
- How to organize for continuity between prisons?

## More than one way...

Which perspective when organizing the education?

At:

- local?
- regional?
- national?

level

## Experiences from Sweden

### Locally

- couldn't manage a wide range of courses

### Regionally

- couldn't achieve continuity when inmates are transferred all over the country

### Nationally

- the efficient way of meeting the needs according to the circumstances

## Topics and levels

- As many topics and courses as possible
- From the very basic level to upper secondary level

...in order to be able to individualize

...because the adult inmates should have the opportunity to have education to a level corresponding to that of young people in general

## Number of qualified teachers

- Reflects the number of topics and courses
- Teachers with different qualifications
- A few teachers employed at each prison
- Every teacher is part of the national resource. All in all, about 130 teachers
- The system makes all courses available for all inmates in the country regardless of location

## Roles for the teachers?

The teachers have three different tasks:

- to teach local students
- to teach distance students
- to coach local students pedagogically when these have distance teachers

Which student a teacher supports depends on the subject needed, not where the student is

*All students are all teachers' responsibility*

## Distance model

Ways of communicating with the student

- intranet for inmates
  - one single inmate in each virtual study room
  - + one teacher or one career counsellor
- telephone (just for received calls)

Thanks to the distance model – about 100 different courses from basic to upper secondary level, in subjects like e.g.

Swedish	Mathematics	Civics	English
Science	Spanish	Philosophy	Communication
French	Religion	German	Physics
Sfi	Psychology	History	Film Science
Economics	Biology	Literature	Russian
Computer science	Health Care	Marketing	Geography

## General adult education

- Swedish for immigrants
- Reading and writing support
- Basic adult education
- Upper secondary adult education
- Validation

## Independence of time

The individual is the main person

- when he/she arrives
- when he/she can start
- a pace that suits him/her
- combining studies with other activities



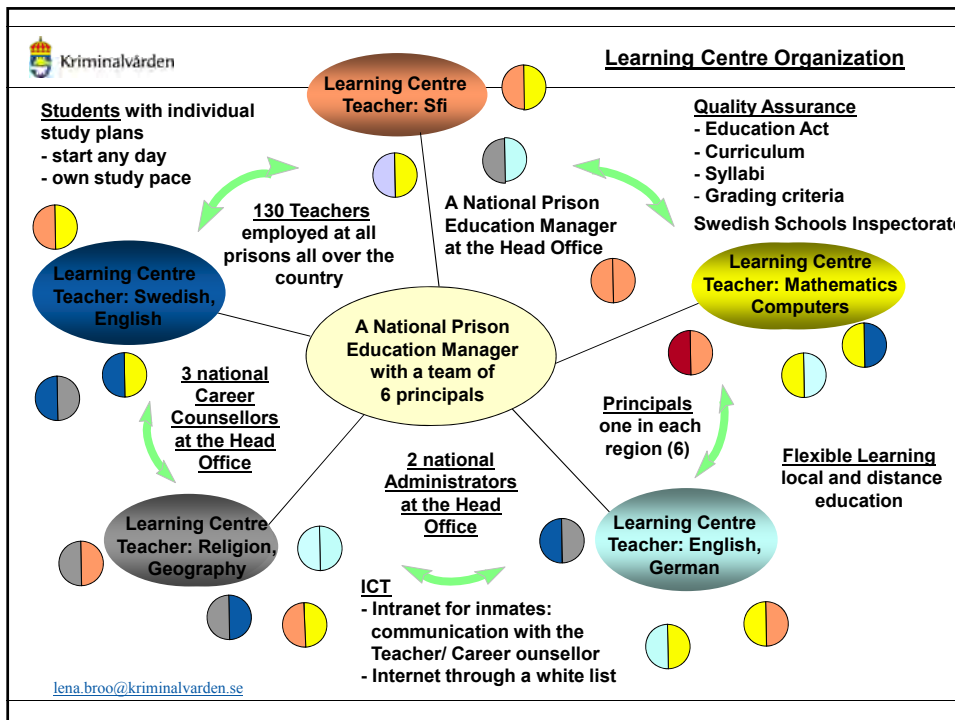
don't have to wait for a group to start

no special course dates

no class groups

no lectures

no semesters



 Kriminalvården

The End of part 1

# Thank You for Your Attention!

[lana.broo@kriminalvarden.se](mailto:lana.broo@kriminalvarden.se)  
Phone: +46 70 23 37 097

Sweden Prison and Probation Administration



2017-06-01

Training and education

# Swedish Prison and Probation Service

Co-funded by the Justice Programme of the European Union 2014-2020



## Personnel resources for training



- Pedagogical development
- Control/coordination
- Strategy work/directives
- Follow up
- Organise and administer basic, further- and specialised training
- Internal consultant in competence and training matters

Permanent

- Director of training and education
- Head of section for development of training and education
- Training centre managers (5)
- Expert
- Administrators (2)
- E-learning production (2)
- Staff trainers from different parts of the Prison and Probation Service (approx 45)

## Prison and Probation Service Basic Training



- All employees starts their employment with basic training
- The basic training for prison officers, probation officers and production managers consist of an introduction, a base-course and specific courses
- The content and length of the basic training is related to the employees profession and work tasks
- The purpose is to prepare the employee both theoretically and practically for working with clients and to improve the necessary abilities
- All employees receive salary during basic training
- The prison officers are being assessed during basic training

## General requirement profile



- Humanitarian mind-set
- Mental stability
- Empathic ability
- Social competence
- Cooperative ability
- Adaptability
- Stress tolerance
- Awareness in security



**Required education:**  
Minimum requirement is secondary school

**Probation officers and inspectors/governors:**  
University/college degree (min 3 years) in sociology, social work, law, behavioural science or similar

## Prison and Probation Service Basic Training



**Introduction course:** E-training, 1 week for all employees and 2 weeks for employees working with clients

**Base course:** 2 weeks, for production managers and prison and probation officers

**Needs-oriented internship and/or work period:** For prison officers, 5 weeks training at a prison/remand prison

**Specific training course:**

- Prison officers 11 weeks (total 20 weeks)
- Probation officers 4 weeks (total 8 weeks)
- Production managers 4 weeks (total 8 weeks)

## Prison and Probation Service Training



Contents of the specific training courses

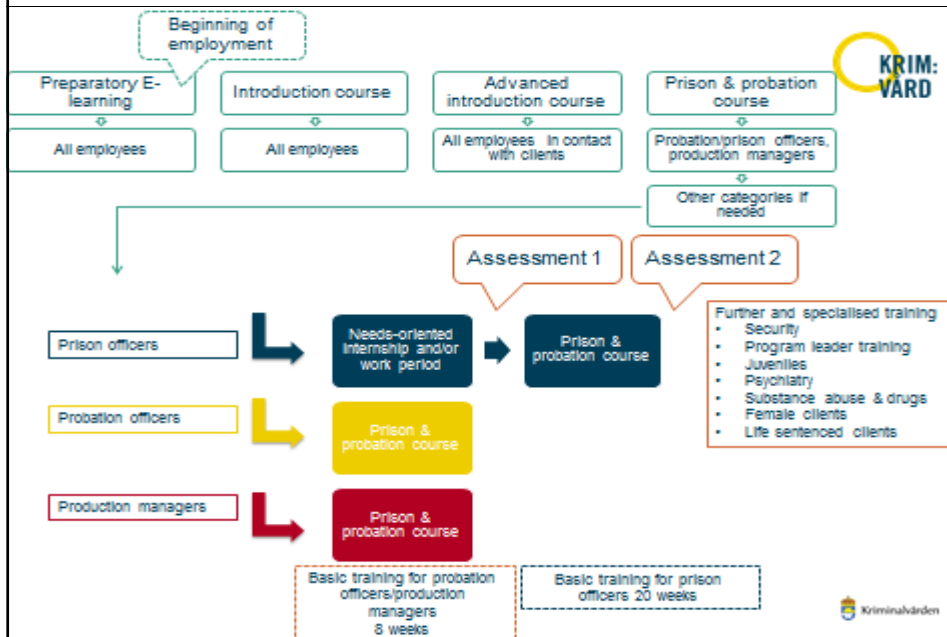
- Ethics and attitudes
- Rules and regulations
- The client and the enforcement of judgement
- Conflict management and security
- Healthcare

## Assessment



- Prison officers are assessed during all basic training
- Purpose is to find strengths and improvement areas
- Structural assessments two times during the basic training

- After 5 weeks internship
- At the end of the basic training
- Discussions with the student
- 27 criteria of assessment
- 3 graded scale



## Further and specialised training



### Focused training for special tasks or work assignments

- Programme leader training
- Security
- Female clients
- Life sentenced clients
- ADHD (Attention Deflancy Hyperactivity Disorder)
- More...
- Substance abuse and drugs
- Juveniles
- Psychiatry
- Clients convicted of sexual related crimes

All employees working with clients will be offered continued training two weeks every four years

## Yearly training volumes



- |   |               |
|---|---------------|
| ✓ Introduction  | 100 people    |
| ✓ Basic training<br><i>(whereof 600 are prison officers)</i>                              | 700 people    |
| ✓ Further and specialised training<br><i>(one person can attend more than one course)</i> | 5000 people   |
| ✓ E-learning activities<br><i>(one person can attend more than one activity)</i>          | 10 000 people |

**Questions?**

# FULFILLING THE ROLE OF NATIONAL MECHANISM FOR THE PREVENTION OF TORTURE

PRZEMYSŁAW KAZIMIRSKI  
DEPUTY HEAD OF NPM  
CFHR OFFICE POLAND



CO-FOUNDED BY THE JUSTICE PROGRAMME OF THE EUROPEAN UNION  
2014 - 2020

## KEY TOPICS

- **BUILDING** the culture of lack acceptance for torture in society
- **CONDUCTING** preventive visits to places of detention as a main role of NPM
- **PREPARATION** recommendation based on problems revealed during monitoring
- **COOPERATION** with other actors for improvement detention's conditions



## GENERAL REASONS FOR REGULAR MONITORING PLACES OF DETENTION

**Finding answers for three main questions:**

- I. Is the SYSTEM OF PROTECTION rights of people deprived their liberty EFFICIENT ENOUGH?
- II. How far are DETAINEES' RIGHTS in certain places LIMITED?
- III. Are these LIMITATIONS REALLY NECESSARY?



## PROBLEMS REVEALED DURING VISITS

**Preparing recommendation based on:**

- *Systemic irregularities*
- *Particular irregularities*

**Addressing to the adequate entities**

**Follow-up process**





## **WE ARE NOT ALONE ...**

**NATIONAL COOPERATION** with other actors  
as a crucial way of implementation improvement  
detention conditions  
(civil society, state authorities, judiciary, legal  
entities of human rights protection, external  
experts)

**INTERNATIONAL COOPERATION** with  
SPT, CPT, APT and NPMs



## **WE SHOULD COOPERATE**

*Because cooperation*

**ENHANCE** our impact

Gives opportunities to **HIGHLIGHT OUR  
POSITION** in law protection system

Make us more **VISIBLE FOR SOCIETY**



## COOPERATION WITH CIVIL SOCIETY

NGO CAN BE USED AS AN EXPERT

The role of *Poland Without Barriers Foundation* in thematic visits in prisons where people with physical disabilities are deprived their liberty

*International Humanitarian Initiative* help during visits Guarded Centres for Foreigners



## COOPERATION WITH STATE AUTHORITIES

State authorities are RECIPIENTS OF OFFICIAL LETTERS

ISSUING OPINIONS ON LEGAL ACTS  
(in force and drafts)

CONDUCTING TRAINING SESSIONS for public officers



## **COOPERATION WITH JUDICATORY**

SENDING POST-VISITS REPORTS to the competent court supervising the relevant place of detention

PARTICIPATION in visiting judges conferences



## **COOPERATION WITH LEGAL ENTITIES OF HUMAN RIGHTS PROTECTION**

**Child Rights Defender**

**Patient Health Advocate**



## COOPERATION WITH EXTERNAL EXPERTS

Asking for an expert opinion  
on a cases we revealed on visits  
(*psychiatrist, psychologist,  
sociologist, pedagogue*)



## INTERNATIONAL COOPERATION

**SPT** Sustain direct contact with SPT to substantial exchanges  
on methods and strategies to prevent torture  
Development a number of tools to help guide and strengthen impact of NPMs

**CPT** CPT 's work can be useful for the  
follow-up to NPM recommendations in several ways

**APT** Valuable theoretical knowledge base ready to use in practice

**NPMs** Useful to exchange ideas on common issues of  
concern, working methods and institutional  
practices



## **BEST PRACTICES ROLE**

**We can improve detention conditions by sharing best practices revealed at visited places**



## **NPM EXPERTS COMMISSION**

**Institution of Experts Commission for National Mechanism for the Prevention of Torture**



## VISIBILITY IN MEDIA

- Press conferences
- Preparing press articles
- Presence on Television



## SOMETHING DIRECTLY FOR SOCIETY

Conducting of public debates  
devoted our role in detainees'  
rights protection system



## WHY OUR ROLE IS SO IMPORTANT ?

*Because prevention is better than  
cure  
&  
Constant dripping wears away  
the stone 😊*



**THANK YOU FOR  
YOUR ATTENTION  
!**

**[P.KAZIMIRSKI@BRPO.GOV.PL](mailto:P.KAZIMIRSKI@BRPO.GOV.PL)**

Trier, 1 June 2017

# Die Rolle der nationalen Präventionsmechanismen - Die Nationale Stelle zur Verhütung von Folter

ERA- Seminar: Verbesserung der Haftbedingungen auf EU-Ebene  
Trier, 1. Juli 2017

*Jennifer Bartelt*





# Gliederung

1. Entstehungsgeschichte
2. Aufbau & Arbeitsweise der Nationalen Stelle
3. Erfahrungen der Nationalen Stelle
4. Ausblick

# 1. Entstehungsgeschichte

- 1984 UN-Antifolterkonvention (UNCAT)  
Einrichtung des UN-Ausschusses zur Verhütung von Folter (CAT)
- 1987 Europäisches Abkommen zur Verhütung von Folter  
Einrichtung des Europäischen Komitees zur Verhütung von Folter (CPT)
- 2002 Zusatzprotokoll zur UN-Antifolterkonvention (OPCAT)  
Einrichtung des Unterausschusses zur Verhütung von Folter (SPT)  
Mitgliedsstaaten müssen Nationale Präventionsmechanismen einrichten (NPM)

- 1. Mai 2009      Arbeitsaufnahme der Bundesstelle zur Verhütung von Folter
- 1. September 2010      Arbeitsaufnahme der Länderkommission zur Verhütung von Folter

## **2 Nationale Stelle – Aufbau und Arbeitsweise**

- 2.1 Mandat und Befugnisse
- 2.2 Zuständigkeitsbereich der Länderkommission
- 2.3 Besetzung der Nationalen Stelle
- 2.4 Arbeitsweise und Durchführung von Besuchen
- 2.5 Festlegung von Schwerpunktthemen

## 2.1 Mandat

- **Regelmäßige präventive Besuche** an Orten der Freiheitsentziehung, Hinweise auf vorgefundene Missstände und Abgabe von Verbesserungsvorschlägen
- **Abgabe von Empfehlungen** zu Rechtsvorschriften
- **Jährlicher Bericht** an die Bundesregierung, Landesregierungen, den deutschen Bundestag und die Länderparlamente

## 2.1 Befugnisse

- Zugang zu allen **Orten** der Freiheitsentziehung (ca. 13.000 in Dtl.)
- Zugang zu allen **Informationen**, welche die Behandlung der festgehaltenen Personen und die Bedingungen ihrer Freiheitsentziehung betreffen
- Zugang zu allen festgehaltenen **Personen**

## 2.2 Zuständigkeitsbereich der Länderkommission

- 184 Justizvollzugsanstalten
- 1270 Dienststellen der Landespolizeien
- ca. 550 psychiatrische Fachabteilungen in psychiatrischen Kliniken oder allgemeinen Krankenhäusern
- 28 Einrichtungen der Kinder- und Jugendhilfe mit geschlossenen Plätzen sowie geschlossenen Heime für Menschen mit Behinderung
- ca. 10.900 Alten- und Pflegeheime, in denen freiheitsentziehende Maßnahmen durchgeführt werden

## 2. 3 Besetzung der Nationalen Stelle





## 2.4 Besuchsablauf

Vorbereitung durch die Geschäftsstelle

Ggf. kurzfristige Ankündigung bei der Aufsichtsbehörde



Einführungsgespräch mit Einrichtungsleitung



Besichtigung der Einrichtung



Gespräche, u.a. mit Patienten, Pflegepersonal, Angehörigen



Akteneinsicht



Abschlussgespräch

## **Besuchsnachbereitung**

- Telefonische Rückmeldung direkt nach Besuch
- Erstellung eines Besuchsberichts und Aufforderung zur Stellungnahme
- ggf. Erörterung des Besuchsberichts und der Stellungnahme

## **Verbreitung von Standards**

- durch den Jahresbericht
- ggf. zukünftig thematische Einzelpublikationen

## 2.5 Festlegung von Schwerpunktthemen

2013 Haft nach Ausländerrecht

2014 Jugendarrest

2015 Jugendstrafvollzug

2016 Frauenvollzug

Vorteile:

- Umfassender Einblick in die Praxis verschiedener Länder / Einrichtungen  
-> Vergleichbarkeit
- Identifikation von Missständen, Festlegung von Standards und best practices

# **3 Erfahrungen der Nationalen Stelle**

## **Empfehlungen und Umsetzung**

- **Menschenwürdige Belegung von Hafträumen**
  - Mindestgröße 6 qm exklusive Sanitärbereich, bei nicht abgetrenntem Sanitärbereich Gesamtfläche von mind. 7 qm
  - Bei Mehrfachbelegung 4 qm für jede weitere Person exklusive Sanitärbereich
  - Hafträume mit Mehrfachbelegung müssen über eine vollständig abgetrennte Toilette verfügen

- **Durchsuchung mit Entkleidung**
  - Justizvollzugsanstalten: Möglichkeit von der Entkleidung abzusehen
  - Polizei: Einzelfallentscheidung
  - bevorzugt wird: 2-phasige Entkleidung
- **Fixierungen im Justizvollzug**
  - lediglich *ultima ratio*
  - mit Bandagensystem und ständiger Sitzwache

- **Verpixelung des Toilettenbereichs bei Kameraüberwachung im besonders gesicherten Haftraum**

➔ *teilweise landesweite Umsetzung (Beispiel Schleswig-Holstein), aber auch gegenteilige Beispiele wie in Bayern*

- **Umgang mit vertraulichen medizinischen Informationen**

Bei Verständigungsschwierigkeiten werden oft Bedienstete oder Mitgefangene hinzugezogen

➔ *Projekte in Bayern etc. Dolmetscher per Videoübermittlung*

- **Nutzung von Absonderungsräumen**
  - Ausstattung vergleichbar mit einem besonders gesicherten Haftraum
- **Respektvoller Umgang (Achtung der Privat- und Intimsphäre)**
  - Anklopfen
  - Siezen der Gefangenen



- **Feststellungen und Empfehlungen im Frauenvollzug  
(Schwerpunkt Jahresbericht 2016)**
  - Eigenständige Frauenvollzugseinrichtungen haben weitreichendere Möglichkeiten geeignete Rahmenbedingungen für Frauen zu schaffen
  - Erforderlich sind erweiterte Kontaktmöglichkeiten zur Familie und den Kindern
  - Bei Bedarf: Untersuchung durch Gynäkologin

## 4 Ausblick

## Herausforderungen

- Nachverfolgung der Umsetzung von Empfehlungen in den Einrichtungen durch Nachfolgebesuche
- Erweiterung des Bekanntheitsgrades der Nationalen Stelle, auch in der Rechtsprechung, um die Umsetzungsbereitschaft in den Einrichtungen und Behörden zu vergrößern und damit die präventive Aufgabe wahrnehmen zu können

## Weitere Informationen finden Sie unter:

I. Internetseite: [www.nationale-stelle.de](http://www.nationale-stelle.de)

- Aktuelle Meldungen und Pressemitteilungen
- Besuchsübersicht
- Veröffentlichung vom Besuchsberichten und Stellungnahmen
- Jahresberichte

II. Facebook

III. Twitter

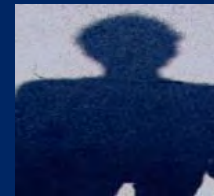


**@NationaleStelle**

**Vielen Dank für Ihre Aufmerksamkeit!**

# *The Future of Mutual Trust and the Prevention of Ill-Treatment*

## *Judicial cooperation and the Engagement of NPMs*



**Trier, 1 June 2017**

Gerrit Zach

Ludwig Boltzmann Institute of Human Rights



Ludwig Boltzmann Institute  
Human Rights



**Co-funded by the Justice Programme of the European Union 2014-2020**



# 1. EAW and FDs on detention: What are the

- challenges and
- chances

in the application of the EAW and FDs on detention in relation to the prevention of ill-treatment (Art. 3 ECHR/Art. 4 CFREU)?

# 2. How can NPMs contribute to this?

## **Art. 3 (2) TEU: Area of Freedom, Security and Justice without internal borders, free movement across EU Member States**

*..... With 28 different legal systems...how does this work?*



# EAW and Framework Decisions relating to Detention

- ▶ FD 2002/584/JHA on the **European Arrest Warrant**
- ▶ FD 2008/909/JHA on the **Transfer of Prisoners (post trial)**
- ▶ FD 2008/947/JHA on **Probation and Alternative Sanctions (post trial)**
- ▶ FD 2009/829/JHA on the **European Supervision Order (ESO; pre-trial)**



# Mutual recognition and mutual trust

## ▶ Mutual Recognition

*mutual recognition is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that they **are accepted as equivalent to decisions by one's own state [...].** Based on this **idea of equivalence** and the trust it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case [...] **Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered.**"*

*European Commission, Communication from the Commission to the Council and the European Parliament on mutual recognition of final decisions in criminal matters, COM (2000) 495 final, 26 July 2000*



# Mutual recognition and mutual trust

- ▶ Mutual Trust
  - ▶ Mutual trust is premised upon the acceptance that membership of the European Union means that all EU Member States are fully compliant with fundamental rights norms
  - ▶ *Raison d'être* of the EU

# Challenges...

*“The record of the Member States in complying with their human rights obligations may be commendable, it is also not pristine”*

*- CJEU Advocate General  
Sharpston*

*Radu C-396/11*

# Challenges...

## Prison conditions in the EU and the ECtHR

- ▶ *Peers v. Greece*
- ▶ *Salejmanovic v Italy*
- ▶ *Orchowski v Poland*
- ▶ *Torregiani v. Italy*
- ▶ *Neshkov and others v. Bulgaria*
- ▶ *Bamouhammad v. Belgium*
- ▶ *Helhal v. France*
- ▶ *Gegeny v. Hungary*

- ▶ Article 3 ECHR/ Article 4 CFREU
- ▶ Absolute prohibition of torture and ill-treatment
- ▶ Non-refoulement
  - ▶ Article 19 (2) CFREU
  - ▶ *Soering v. UK*
  - ▶ *Saadi v. Italy*

# Challenges...

- ▶ How far can an automatic system of mutual recognition based purely on presumed trust go? Does mutual trust mean blind trust?
- ▶ Do judges have to take into account any potential fundamental rights implications when giving effect to a mutual recognition instrument?

# Mutual trust and non Refoulement

## Jurisprudence in asylum cases

- ▶ *M.S.S v. Greece and Belgium* (ECtHR)
- ▶ *Tarakhel v. Switzerland* (ECtHR)
- ▶ *N.S and ME* (CJEU)



# CJEU: Aranyosi/Caldărăru

## Jurisprudence in criminal cases

- ▶ **Name of the parties** Criminal proceedings against Pál Aranyosi and Robert Căldăraru
- ▶ **Case Number** C-404/15 and C-659/15 PPU
- ▶ **Date of the judgement** 5 April 2016
- ▶ **Court** Court of Justice (CJEU)
- ▶ **Link** <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-404/15>

# CJEU: Aranyosi/Caldărăru

**CASE 1:** Two EAWs for Mr. Aranyosi issued – 4 November and 31 December 2014 by judge at the district court of Miskolc, Hungary

- ▶ for accusation of crimes committed in Hungary:
  - ▶ forced entry into a dwelling house, theft
  - ▶ forced entry into a school, stealing equipment and cash, damage
- arrest in Bremen, Germany in Jan. 2015
  - ▶ Lives in Bremerhaven (Germany), with his mother, unmarried, 8-month old child with his girlfriend
  - ▶ Denied offenses
  - ▶ Declined to consent to simplified surrender procedure

# CJEU: Aranyosi/Caldărăru

## Public prosecutor of Bremen

- ▶ referring to detention conditions in a number of Hungarian prisons, asked district court of Miskolc to state in which prison Mr. Aranyosi would be held, in case surrendered
- ▶ requested that surrender should be declared lawful, because of no specific evidence of torture, cruel, inhuman, degrading treatment
- ▶ Mr. Aranyosi's lawyer demanded rejection of surrender

## Decision by Higher Regional Court in Bremen

- ▶ “probative evidence that, in the event of surrender to the Hungarian judicial authority, Mr Aranyosi might be subject to conditions of detention that are in breach of Article 3 ECHR and [...] Art. 6 TEU”

→ not in a position to give a ruling due to restrictions in Art. 1 (3) EAW FD

# CJEU: Aranyosi/Caldărăru

## Legal basis for the judgement

### European Arrest Warrant Framework Decision, Art. 1

- ▶ 1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.
- ▶ 2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.
- ▶ **3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.**



# CJEU: Aranyosi/Caldărăru

## **Art. 6 TEU**

*The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.*

*[.....]*

*Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union's law.*

## **Art. 4 CFREU/Art. 3 ECHR**

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*



# CJEU: Aranyosi/Caldărăru

- ▶ The questions referred by the Higher Regional Court of Bremen to the CJEU were the following:
- ▶ Is Article 1(3) of the Council Framework Decision on the European arrest warrant (...) to be interpreted as meaning that **extradition for the purpose of prosecution is impermissible where there are strong indications that detention conditions in the issuing Member State infringe the fundamental rights of the person concerned** and the fundamental legal principles as enshrined in Article 6 of the Treaty on European Union, or is it to be interpreted as meaning that, in such circumstances, the **executing Member State can or must make the decision on the permissibility of extradition conditional upon an assurance that detention conditions are compliant?** To that end, can or must the executing Member State lay down specific **minimum requirements applicable to the detention conditions in respect of which an assurance is sought?**
- ▶ Are Articles 5 and 6(1) of the Council Framework Decision on the European arrest warrant (...) to be interpreted as meaning that the issuing **judicial authority is also entitled to give assurances that detention conditions are compliant, or do assurances in this regard remain subject to the domestic rules of competence in the issuing Member State?**



# CJEU: Aranyosi/Caldărăru

**CASE 2:** EAW issued for Mr. Caldărăru – 29 October 2015 by judge at the Court of first instance of Făgăraș, Romania

- ▶ sentence of 1 year and 8 months imprisonment for the offence of driving without a driving license
- arrest in Bremen, Germany in Nov. 2015
  
- ▶ Denied consent to simplified surrender procedure
- ▶ Public Prosecutor:
  - ▶ applied to court for Mr. Caldărăru to be detained pending extradition – granted
  - ▶ Applied to the court for the surrender to be declared lawful

# CJEU: Aranyosi/Caldărăru

## Decision by Higher Regional Court of Bremen

- ▶ “probative evidence that, in the event of surrender to the Romanian judicial authority, Mr Caldărăru might be subject to conditions of detention that are in breach of Article 3 ECHR and [...] Art. 6 TEU”
- ▶ Decision based on ECtHR judgements, CPT report

**→ not in a position to give a ruling due to restrictions in Art. 1 (3) EAW FD**



# CJEU: Aranyosi/Caldărăru

## CJEU judgement

Mutual trust and mutual recognition are of fundamental importance

**BUT**

not absolute: limitations to mutual recognition and mutual trust in “exceptional circumstances”

- ▶ Execution of an EAW should not lead to a violation of the absolute prohibition of torture and ill-treatment (Art. 3 ECHR)

# CJEU: Aranyosi/Caldărăru

How to proceed when a risk of torture and ill-treatment could exist in case of surrender in a EAW?

*1. Judges need to obtain general information about the situation in detention*

*2. Assessment of the individual case in the context of proven and general risks of ill-treatment: judges need specific information*

*3. After surrender of the person under assurances he/she will be well treated: monitoring of the case*



# CJEU: Aranyosi/Caldărăru

How to proceed when a risk of torture and ill-treatment could exist in case of surrender?

## 1. Receipt of general information

- ▶ executing State needs to receive “*objective, reliable, specific and properly updated information*” about detention conditions to show “*systemic or general deficiencies*”, or “*affecting certain groups of people, or certain places of detention*”
- ▶ This information can be provided by:
  - ▶ “Judgments of international courts, such as [...] the ECtHR,
  - ▶ judgments of courts of the issuing Member State, and also
  - ▶ decisions, reports and other documents produced by bodies of the Council of Europe or
  - ▶ or under the aegis of the UN.”

→ **CPT, SPT, NPMs**

# CJEU: Aranyosi/Caldărăru

## ***2. Assessment of the individual case in the context of proven and general risks of ill-treatment***

- ▶ Executing State must perform a “specific and precise” assessment of whether “there are substantial grounds to believe that the individual concerned will be exposed to “real risk” risk because of the conditions for his detention envisaged in the issuing Member State
  - ▶ *“information on the conditions in which it is envisaged that the individual concerned will be detained in that MS”*
  - ▶ *request may also relate to “the existence, in the issuing Member State, of any **national or international procedures and mechanisms for monitoring detention conditions**, linked, for example, to visits to prisons, which make it possible to assess the current state of detention conditions in those prisons. ”*

→ NPMs

# CJEU: Aranyosi/Caldărăru

If the surrender happens, upon receipt of information stating the individual concerned will not be at treat, how to monitor it?

### 3. Question of assurances – monitoring the individual case

- ▶ CJEU did not pronounce itself on the question
- ▶ European Court of Human Rights (*Othman v. UK*):
  - ▶ *“assurances are not in themselves sufficient to ensure adequate protection against the risk of ill-treatment. There is an obligation to examine whether assurances provide, in their practical application, a sufficient guarantee that the applicant will be protected against the risk of ill-treatment.”*
  - ▶ *“whether compliance with the assurances can be objectively verified through diplomatic or other monitoring mechanisms”*

→ NPMs?

# FD 909 on the transfer of prisoners... challenges

- ▶ Article 3 FD 909 states that it shall: *Not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU*
- ▶ Objective: Faciliate social rehabilitation
- ▶ Issue of Consent
- ▶ Overcrowding/non-refoulement
- ▶ Challenges to implementation (lack of guidance, lengthy process, different interpretation by courts that apply it).

# Recommendations

- ▶ Non-refoulement: Greater access on to information for judges on detention conditions across the EU, e.g. in one database
- ▶ FD 909: adequate and accessible information should be provided to the prisoners in relation to their rights and details of any proposed transfer.
- ▶ FD 909: a handbook, guidelines on transfers and discussion on the implementation

# Chances of the FDs: alternatives to detention

## **FD 829: European Supervision Order (ESO)**

- ▶ Reduction of Overcrowding
- ▶ Addressing discrimination between nationals and non nationals accused of a crime
- ▶ Addressing additional hardships of a foreign prisoner

## **Challenges in the application of the ESO**

- ▶ Lack of awareness about the instrument and the process (issue re legal costs and access to legal aid)
- ▶ Significant documentation
- ▶ No reliable information on its application, but remains underused



# Chances of the FDs: alternatives to detention

## **FD 947 on probation and alternative sanctions**

- ▶ Reduction of Overcrowding
- ▶ Rehabilitation - consent needed

## **Challenges in the application of the FD 947**

- ▶ Lack of awareness about the instrument and the process
- ▶ Some MS have not transposed all mandatory measures as listed in the FD
- ▶ No reliable information on its application, but remains underused

# Recommendations

- ▶ Benefits of the instruments should be promoted among members of the judiciary, including generally the importance of alternatives to detention
- ▶ More training seems to be needed on the practical application
- ▶ An evaluation of the current status of application of the FDs on detention should be undertaken
- ▶ Good practices should be shared and a handbook for more guidance developed
- ▶ It was considered useful to have one website/database/search tool, to have an overview about competent authorities, contact information, conditional/early release information, etc.

- ▶ **Role of the judiciary in the prevention of ill-treatment**

*“Judges and prosecutors are key actors in the prevention of torture. [...] By upholding international standards and safeguards, judges can greatly contribute to reducing the risk of torture and other forms of ill-treatment.”*

***What do National Preventive Mechanisms  
have to do with all of this?***

▶ **Role of NPMs in the prevention of ill-treatment**

*States are to “set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment”*

*“recommendations should have a preventive focus, addressing systematic gaps and practices (root causes)”*

(UN Optional Protocol to the Convention against Torture)



- ▶ **Relationship between NPMs and the judiciary – status quo**
  - ▶ Judges lack awareness about NPMs
  - ▶ Cautiousness from NPMs and judges: independence, restricted interpretation of NPM mandate
  - Strong interest from both “sides” to strengthen relationships.. but need for guidance
  - How to do this... and why?

- ▶ **Why to engage in the first place?**
  - ▶ Prevention of torture and ill-treatment as a joint interest and a collaborative effort
  - ▶ Raising awareness about implications of a prison sentence
  - ▶ Using each other as source of information

- ▶ **How... in cross-border proceedings**
- ▶ The executing States needs to receive “**information that is objective, reliable, specific and properly updated on detention conditions** prevailing in the issuing Member State and that demonstrates that there are deficiencies, which may be systematic or generalised, or which may affect certain groups of people, or [...] certain places of detention”

CJEU, *Aranyosi/Caldărăru* judgement



## ▶ **How... in cross-border proceedings**

- ▶ NPM reports are providing information that is “objective, reliable, specific and properly updated on detention conditions”

### ▶ **Prerequisites**

- Lack of awareness and trust of judges
- Quality of NPM reports
- Publicity and accessibility of NPM reports
- Language of the NPM reports



## ▶ **How... in cross-border proceedings**

- ▶ NPM providing specific information in cross-border proceedings
- ▶ No monitoring of assurances
- ▶ NPMs addressing the challenges of FDs on on detention
- ▶ Promoting the prevention of ill-treatment in EU legislation

## ▶ **How... in a national context**

### ▶ Institutional exchange

- Dissemination of information by NPMs, e.g. sending of reports
- Trainings/internships et al.
- Personal exchange of judiciary and NPMs
- Taking advantage of (former judges) who are part of the NPM or its advisory structures

▶ **How... in a national context**

- ▶ Addressing the judiciary's role in the prevention of ill-treatment, e.g. overcrowding through alternatives to detention
- ▶ NPM contributions to court proceedings
  - In 13/24 jurisdictions NPM publications have been used in court proceedings
  - Providing specific information

# Recommendations

- ▶ Interaction between the judiciary and NPMs in relation to prison conditions seems to be mutual beneficial and should be increased. This can be through formal or informal channels, e.g. through information sharing, dissemination of reports, exchange of information et al.
- ▶ Increased awareness by the judiciary is needed and should be established, e.g. through trainings on the NPM mandate or conferences on joint areas of concern, sharing of reports, etc.
- ▶ NPMs should establish themselves as reliable sources, through the quality of their reports and should publish these reports. The reports should also be widely disseminated.
- ▶ NPMs should strengthen their understanding of EU law as a prerequisite to comment on laws and play a more active role in the legal implementation of these laws.

# ***Questions, comments, requests for further information....?***

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***Ludwig Boltzmann Institute of Human Rights***

[\*bim.lbg.at\*](http://bim.lbg.at)

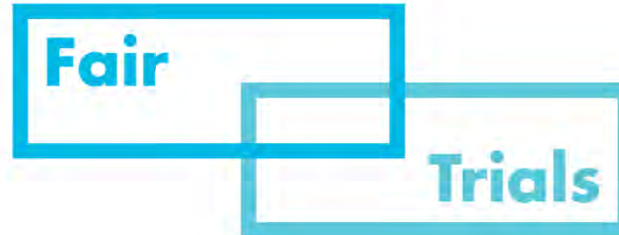
***Atlas of Torture (database compiling reports on torture  
and ill-treatment worldwide, to be launched in late 2017)***

[\*atlas-of-torture.org\*](http://atlas-of-torture.org)





Co-funded by the Justice Programme of the European Union 2014-2020



# The practice of pre-trial decision-making in the EU and its effects

2 June 2017

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## Pre-trial detention, the EAW & *Aranyosi and Caladararu*

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- Prison conditions are less of a concern where there is a presumption in favour of release
- But judgement was not just about prison conditions
- Duty to respect fundamental rights and conduct rigorous human rights assessment before surrender and not surrender if fundamental rights are at risk.
- Properly applied presumption in favour of release can help avoid use of *Aranyosi and Caladararu* to justify refusal to execute an EAW for other fundamental rights at issue with pre-trial detention.





## Fundamental Rights at Issue in PTD

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- **Right to liberty**
  - 14% of ECHR violations by EU Member States
- **Right to be free from torture or inhuman or degrading treatment or punishment**
  - Pretrial detainees often placed in worse conditions and subject to neglect
  - Major cause of prison overcrowding (up to 40% in EU Member States; EU as a whole has second highest rate of PTD in world, at 46.2 per 100,000).
- **Right to family life**
  - Causes major disruption to families, jobs, health, etc.
- **Right to a fair trial, and in particular the presumption of innocence**
  - Those in pretrial detention more likely to be found guilty
  - Pretrial detainees more likely to be sentenced to prison
  - Pretrial detention used as a coercive tool
- **Right to freedom of expression**
  - Can be used to silence critics (e.g. against civil society, human rights defenders, journalists)



## Conditions in Pre-trial Detention: CPT 2016 Annual Report

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- CoE Secretary General: “The CPT has regularly identified serious shortcomings in the conditions in which pre-trial prisoners are held in Europe”
- In many countries the persistent problem of overcrowding in prisons is due to a large extent to the high proportion of remand prisoners among the total prison population.
- CPT President: “Detention on remand can have severe psychological effects – suicide rates among remand prisoners can be several times higher than among sentenced prisoners – and other serious consequences such breaking up family ties or the loss of employment or accommodation”
- Key recommendation: “Remand detention should be imposed for the shortest time possible. It should be based on a case-by-case evaluation off the risks of committing a new crime, of absconding, of tampering with evidence or witnesses or interfering with the course of justice.”



## ECHR Standards: A Measure of Last Resort

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- ECtHR has repeatedly emphasized the presumption in favour of release and has set out detailed standards limiting its use as only an exceptional measure.
- State must show that a less intrusive alternative to detention would not work
- PTD may be ordered only when there is a risk that the suspect will fail to appear for trial, spoil evidence of intimidate witnesses, or commit further offenses, or that the release will cause public disorder. In exceptional cases PTD may be ordered to protect the suspect
  - Seriousness of alleged offense not enough
  - Risk of flight cannot be based on the lack of a fixed residence or the threat of long-term imprisonment.
  - Risk of reoffending must be based on actual evidence; merely a lack of a job or local family ties not enough
  - Public disorder must actually remain threatened
- In addition, there must be reasonable suspicion that the person committed the offence and in cases of prolonged detention that suspicion must persist and remain throughout.
- Decisions must be sufficiently reasoned and taken promptly and after an oral and adversarial hearing before an independent body and must be subject to regular review.

## The Practice of Pre-trial detention: Monitoring Judicial decision-making and alternatives

Funder: European Commission

Coordinator: Fair Trials

### Research partners:

*University of West England, England and Wales.*

*Centre for European Constitutional Law (CECL), Greece*

*Hungarian Helsinki Committee (HHC), Hungary*

*Irish Penal Reform Trust (IPRT), Ireland*

*Antigone, Italy*

*Human Rights Monitoring Institute (HRMI), Lithuania*

*University of Leiden, Netherlands*

*Polish Helsinki Committee (HFHR), Poland*

*Apador-CH, Helsinki Committee, Romania*

*Asociacion pro Derechos Humanos de Espana (APDHE), Spain*

- Desk-based research – 10 countries
- Defence practitioner survey – 544 lawyers participated
- Hearing monitoring – 242 hearings attended
- Case file review – 672 cases reviewed
- Interviews – with 56 judges
- Interviews – with 45 prosecutors

Country Reports October – December 2015

Regional Report – May 2016

LEAP Experts Meeting – July 2016

OSCE Meeting – September 2016

EC Roundtable – October 2016

## Pre-trial decision-making procedure

- Lack of equal treatments of prosecution and defence
  - Judicial grants of prosecutorial requests (92% Poland, 83% Romania, 95% Lithuania, 90% Hungary)
  - Reference to prosecutors arguments vs lawyers (92% vs 50 in Hungary, 70% vs 15% in Lithuania, 99% in Romania)
- Access to a Lawyer and Effective Assistance of Counsel
  - Hearings without a lawyer in Poland and Hungary
  - Legal aid problems in Spain, Italy and Lithuania
  - Legal restrictions on accessing case file (Estonia and Hungary), general insufficient access (Lithuania, Poland, Romania, Spain, Sweden), and time pressure (Hungary, Ireland, Luxembourg, England & Wales, Spain)
- Interpretation and translation problem, particularly in Greece (no translation observed at all despite 43% of defendants foreign nationals)

## The substance of pre-trial detention decisions

- Presumption of Detention
  - Good example: England & Wales and Ireland
- Detention grounds in tension with ECtHR standards
  - Gravity of offence – flight risk (Hungary, Greece, Spain, Lithuania, Romania, Netherlands; Poland?)
  - Gravity of offence – shifting burden (Sweden)
  - Non-national or insecurely housed– flight risk (Greece, Italy, Spain)
  - Interference with evidence – unsubstantiated and without due diligence in investigation (Hungary)
  - Risk of reoffending – determined by offence type or unrelated/old offences (Lithuania)
- Inadequate case-specific reasoning

## PTD imposed for unlawful purposes:

- Public opinion
  - See Greek case example of young woman who accidentally killed her finance.
  - Dutch “shocks the legal order” standard
- To punish the “guilty” where conviction not assured
  - Judges interviewed indicate the pressure to do this, inc. 4 out of 5 Spanish judges
- To extract confessions
  - For example 80% of defence lawyers in Lithuania said that they have seen this, with prosecutors negotiating no detention in exchange for cooperation
- Prejudice and discrimination
  - Foreign nationals detained disproportionately (e.g. Italy, Greece, Northern Ireland, Netherlands, Luxembourg)
  - Women may be disproportionately affected “for their own good”, especially drug users
  - Roma



## Use of alternatives to detention

- Lack of trust and experience in alternatives by judges leading to poorly reasoned decisions
  - Good practice: England & Wales
  - Good practice with problems: Ireland
- Inadequate legislation
- Practical obstacles to ordering pragmatic alternatives to detention
- Need for increased enforcement of conditions to build faith

## Review process & special diligence

- Repetition of previous decision, not effective review (Poland, Hungary)
- Suspect not always present at hearing, not always an oral hearing
- Lack of special diligence, time limits and judicial control of the investigation
  - Good example: Netherlands, England and Wales
- Widespread lack of awareness and application of ECtHR-standards

## Mr. Ahn

- Algerian National in Italy with a young son.
- Detained in relation to charges of extortion while working as a parking attendant, based on a verbal complaint of an acquaintance and on fact that prosecutors thought he had too much money in his bank account
- Complainant never appeared in court to give testimony and evidence never validated.
- Held in PTD based on gravity of the accusations and risk of reoffending without reference to evidence beyond the allegations
- Did not speak Italian but was denied an interpreter
- Held in PTD 445 days and then acquitted.

## Andrew Symou

- A young British student on holiday in Greece, arrested on return to the UK in related to death of a British tourist he had never met
- Only evidence were witness statements obtained through police abuse
- Was surrendered pursuant to an EAW and spent 10 months in PTD including six months as the youngest resident of the maximum security Korydallos Prison (called by Amnesty the worst in Europe), where is suffered abuse.
- Was eventually released from PTD and acquitted.

## German Fraud Case

- A German citizen suspected of being part of a corporate fraud scheme. Held in detention since beginning of 2013.
- PTD initially justified based on the fact that he had money in Singapore. Later disproven but still not released. Now PTD based on the fact that he speaks English and studied in the US (therefore he would be able to live and maintain himself abroad). Appears to indicate real concern is public opinion, post-financial crash
- Visits from relatives limited to two hours per month.
- Youngest son was two years old when he was arrested and will start school this summer.
- Housed 500 km away from his home.

Fair

Trials

Recommendations

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## Procedure

- Prompt initial hearing and de novo initial review
- Improve access to materials essential for challenging detention
- Enforcement of the right of access to a lawyer
- Ensuring that prosecution and defence arguments are treated equally

### **The substance of pre-trial detention decisions**

- Enforcement of reasonable suspicion and threshold of crime with de minimus standard for imposition of PTD
- Better regulation of lawful grounds for pre-trial detention
- Explicit consideration of all available alternatives to demonstrate that PTD is a measure of last resort
- Requirement to make reference to both prosecution and defence arguments and the specific facts of each case

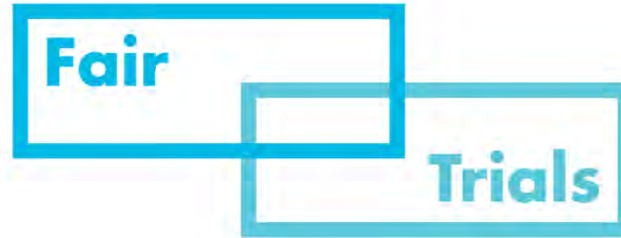
## Alternatives

- Increased investment in development of alternatives: bail hostels, drug treatment programs, to a lesser extent bail and electronic monitoring
- Greater development and use of dedicated pre-trial services, borrowing from probation context, for pre-trial risk assessment, supervision and enforcement of conditions of release
- Judicial oversight of alternatives to ensure they do not overly infringe on liberty
- Sharing of best practices and low-cost, practical solutions like Irish mobile phone monitoring



## Review process

- Same procedural guarantees as in initial hearing: oral, adversarial hearing at which defendant and counsel can attend, reference to both parties' arguments, reference to enduring strength of reasons for detention
- Regular Review and Hearing: Automatic, regular reviews (monthly?) plus ability to request ad hoc review on the basis of changed circumstances
- Judicial control over investigation through the use of interim time limits in relation to specific investigative acts
- Possibility of judicial review of detention by judge independent of the investigation
- Maximum time limits?



# The practice of pre-trial decision-making in the EU and its effects

2 June 2017

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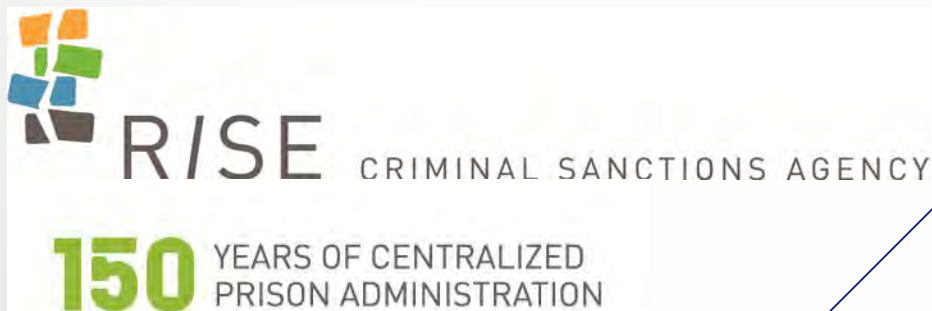


Co-funded by the Justice Programme of the European Union 2014-2020

## Framework Decision 909 on the Transfer of Prisoners: An update on issues, processes and practices in relation to its use

Improving detention conditions at EU level  
ERA, Trier 1-2 June 2017

Katja Đogović, Co-chair of Europris FD909 expert group  
Chief Lawyer, Criminal Sanctions Agency, Finland



# EuroPris and FD909 expert group

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The European Organisation of Prison and Correctional Services (EuroPris) is a non-political, non-governmental organization that was initiated in late 2010, founded in 2011 and officially registered in The Netherlands in December 2011.



The EuroPris expert group on the transfer of foreign national prisoners was established in 2012 to assist member states with the implementation of EC FD 2008/909/JHA and examine lessons that could be learned through shared exchange of information.

The European Commission provided additional funding to EuroPris to invite all 28 EU Member States to attend the expert group meeting from 2015.

Experts are representatives of the authority responsible for the transfer of foreign national prisoners which include national prison services, Ministry of Justice and Courts.

# What is FD909?

- FD 909 provides for the transfer of prisoners between Member States of the European Union.
- Transfer can take place with or without the consent of the prisoner concerned.
- The Framework Decision provides for the transfer of an individual or the transfer of enforcement of a sentence when a person is already present in the Executing State.
- Executing State has only limited grounds on which to refuse to accept the return of its nationals.
- Aim of the Framework Decision is to support the social rehabilitation of offenders who find themselves in prison outside their own country.

# Differences between CoE Convention and FD909

Convention	FD909
Treaty	EU regulation: mutual recognition (and trust)
Voluntary transfer	Compulsory transfer (possible)
Two procedures: 1. conversion 2. continued enforcement	One procedure 1. continued enforcement
No time limits	Time limits
Early or conditional release according law of executing state	Explicit possibility to take over foreign release date
Executing state collects detainee	Issuing state delivers detainee

# Implementation

Implementation status of EU Framework Decisions 909

[https://www.ejn-crimjust.europa.eu/ejn/EJN\\_library\\_statusOfImpByCat.aspx?CategoryId=36](https://www.ejn-crimjust.europa.eu/ejn/EJN_library_statusOfImpByCat.aspx?CategoryId=36)

Notifications by EU Member States

[https://www.ejn-crimjust.europa.eu/ejnupload/Practical\\_info/CS/ImplementationCSNov16.PDF](https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/CS/ImplementationCSNov16.PDF)

Competent Authority

- In some Member States, the role of the Competent Authority has been adopted by one single agency such as the national prison administration, in others it has been adopted by multiple agencies, responsible for geographic regions such as regional courts.
- The EuroPris expert group have discussed whether it would be possible for Member States with multiple delegated competent authorities, to establish one central authority who could deal with queries regarding relevant courts, queries about legislative processes or chasing responses.

# Grounds for FD909 transfer

- Final judgment (article 1(a))
- Custodial sentence (article (1)(b))
- Executing State is (article 4(1))
  - a) the MS of nationality of the sentenced person in which sentenced person lives
  - b) the MS of nationality, to which, while not being the MS where he/she lives, the sentenced person will be deported, once he/she is released from the enforcement of the sentence on the basis of an expulsion or deportation order included in the judgment or in a judicial or administrative decision or any other measure taken consequential to the judgment; or
  - c) any MS other than a MS referred to in (a) or (b), the competent authority of which consents to the forwarding of the judgment and the certificate to that MS.
- Facilitating the social rehabilitation of the sentenced person (article 3(1))
- Sentenced person is in the Issuing State or in the Executing State (article 3(2))
- Sentenced person has given his/her consent where required (article 6)
- Double criminality verified where required (article 7)
- The Executing State is not refusing the recognition and enforcement based on grounds listed in article 9



# Consent and information about the transfer process

- FD 909 provides that sentenced person consent to his/her transfer to another MS. However the consent of the sentenced person is not required (article 6):
  - the person is a national of the country of the Executing State and also lives there;
  - the person would be deported to the Executing State on completion of his/her sentence; or,
  - the person has fled or otherwise returned there in response to the criminal proceedings.
- Where the consent of a sentenced person is not required, the opinion of that person should still be sought and taken into account prior to a certificate being issued.
- The process by which MS's obtain the consent and/or opinion of a sentenced person being considered for transfer under the FD909 varies, for example
  - Requirement of written consent from the prisoner,
  - Requirement of the prisoner to appear before a judge.

# Consent and information about the transfer process

- Providing prisoners with additional information about the transfer process and prison regime of the country to which they may be transferred. It is hoped that this will assist in obtaining the prisoner's informed consent to transfer.
- The Offender Leaflet, developed by the STEPS 2 Resettlement project provides an overview of the transfer process. Download via: <http://steps2.europris.org/en/documents/>
- The [Offender Handbook](#), developed by the STEPS 2 Resettlement project provides more detailed about the transfer process, prisoner rights and a glossary of technical terms used within the Framework Decision. Download via: <http://steps2.europris.org/en/documents/>
- The EuroPris expert group has collated [Prisoner Information](#) sheets to enable prisoners, staff and Competent Authorities to access information about prisons in the executing state and support informed consent for transfer. The information sheets are available in the national language and English and provide an overview of topics such as induction procedures, family visiting and early release arrangements. These can be accessed via <http://www.europris.org/fd-909-prisoner-information-sheets/>

# Social rehabilitation

- The concept of social rehabilitation is central to FD 909 (article 3):  
'The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.'
- This issue was further explored by De Montfort University (UK) under [Workstream 3](http://steps2.euopris.org/en/documents/) of the STEPS 2 Resettlement project. This can be accessed via <http://steps2.euopris.org/en/documents/>

# Time limits

- No time limit for issuing the FD909 certificate.
- 90 day time limit for the executing state to decide whether it will take over the enforcement of the sentence (article 12).
- The transfer should be completed with 30 days of the final decision (article 15).

# Translations

- The Issuing State sends the certificate (FD909 Annex I) and judgment to the Executing State with the language the executing state will accept – details [https://www.ejn-crimjust.europa.eu/ejnupload/Practical\\_info/CS/ImplementationCSNov16.PDF](https://www.ejn-crimjust.europa.eu/ejnupload/Practical_info/CS/ImplementationCSNov16.PDF)
- Translation can be costly and timely to procure and cause delays in Competent Authorities issuing certificates for transfers, in particular relating to the judgment and answering supplementary questions the Executing State may have.
- Best practice as discussed at EuroPris expert group meetings:
  - It is not necessary to fully translate the whole of the judgment.

Instead a summary of the judgment should be contained in the certificate and include a description of the main facts of the offence. However, where cases were of particularly high risk, or there were distinct differences in sentencing policy, or where the case was particularly complex, the executing state may still request a translation of the full judgement.
  - Regular communication is encouraged.

For example in cases where a two countries are in regular communication e.g. one country receives a high volume of requests to transfer the sentence from another country. For example a conversation between Competent Authorities prior to a certificate being issued, or could be a bilateral meeting so that the issuing state understands the elements of the judgment that are most important for the Executing State to receive. This would help to avoid repeated requests for further information.

# Interpreting the sentence (1/3)

- Difficulties in obtaining and understanding early release arrangements in other MS.
- Lack of consistency regarding how pre-sentence detention is calculated and accounted for by other MS.
- FD909 is explicit in limitations on sentence adaptation and does not provide scope for sentence conversion or the Executing State effectively re-sentencing a prisoner following transfer.
  - A different sentence may only be imposed ('adapted'), when the sentence in the Issuing State exceeds that of the executing state (article 8). In this case a sentence can only be adapted to that maximum sentence and no lower.
  - In some cases, the executing state may be able to recognise part but not all of the sentence (article 10). The possibility of partial enforcement should be considered before refusing a request in these circumstances. Discussion between the Competent Authorities is essential in these cases.

# Interpreting the sentence (2/3)

- Best practice:
  - Include the date the sentence started (and anticipated release date where applicable) on the certificate and the length of sentence, so that it is clear how long has been served and how early release arrangements might be calculated.
  - Issuing States should use section (j) of the certificate to elaborate on information relevant to understanding the sentence and early release arrangements in their country. Where possible, this should include information on how time on remand is accounted for, effect of other sentences and whether early release arrangements are mandatory or discretionary and if that would entail release on licence or full discharge.

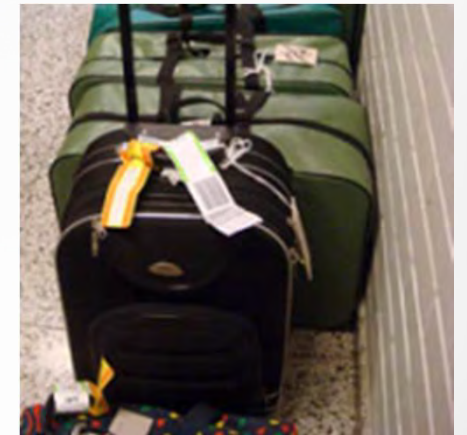
# Interpreting the sentence (3/3)

- Best practice:
  - If supplementary information on early release arrangements as annex to the certificate, it can be helpful for the Issuing State to provide supplementary explanation of how this applies to the particular case.
  - For a prisoner with multiple convictions, it should be clearly stated how long the sentence for each conviction is and whether sentences are running consecutively or concurrently. This is especially important where an executing state might not recognise one or more of the offences.
  - Summary information on early release arrangements is included within the [Prisoner Information](#) sheets from many countries. These can be accessed via <http://www.euopris.org/fd-909-prisoner-information-sheets/>



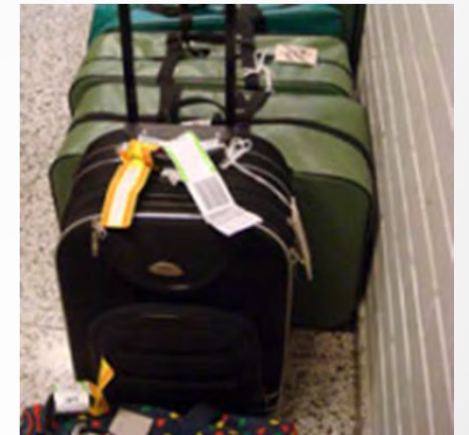
# Practical Transfer

- There are multiple agencies responsible for the physical transfer of prisoners in MS, including prison agencies and Interpol. Information needs to be appropriately shared with these agencies to manage the risk and responsibility for the transfer of prisoners.
- Best practice:
  - The Issuing State should seek to include any information that would be vital to the practical transfer arrangements or early days in custody, such as physical needs of the prisoner within section (I) of the certificate.
  - The [Prisoner Information Document](#) should accompany a prisoner during transfer with information that is necessary and proportionate for the safety of the prisoner and accompanying staff should be included. This form is developed by EuroPris expert group and can be downloaded:  
[http://www.euopris.org/resources\\_package/prisoner-transfer-information-form-version-4/](http://www.euopris.org/resources_package/prisoner-transfer-information-form-version-4/)



# Practical Transfer

- Best practice
  - MS adequately scope and seek to ensure they have enough staff capacity to escort prisoners.
  - Where MS have entered into contractual arrangements with private companies for the transfer of prisoners, information on these arrangements should be shared with the issuing state.
  - Travel documentation is not always crucial for the enforcement of transfer. It is the responsibility of the Issuing State to ensure that the requisite travel documents are available.



# Staff training

Through the Support for Transfer of European Prison Sentences Towards Resettlement (STEPS 2) project, an e-learning platform was developed to support practitioners (decision makers of the transfers) using FD 909.

The e-learning is divided into 4 chapters:

Chapter 1: objectives, principles and legal framework of Framework Decision 909

Chapter 2: the transfer process

Chapter 3: certificate

Chapter 4: additional information and legislation

The e-learning platform can be accessed in English and Spanish via:

<http://steps2.euopris.org/en/home/e-learning-platform/>

# Recourse book by EuroPris (in June 2017)

<http://www.euopris.org/expert-groups/framework-decision-2008909jha-transfer-of-prisoners/>

# Court of Justice of the European Union

[www.curia.europa.eu](http://www.curia.europa.eu)



*Thank You!*



# PROMOTING PROFESSIONAL PRISON PRACTICE

[www.euopris.org](http://www.euopris.org)





CO-FUNDED BY THE JUSTICE PROGRAMME OF  
THE EUROPEAN UNION 2014-2020

# STATUS OF IMPLEMENTATION FRAMEWORK DECISIONS

947 & 829

ANTON VAN KALMTHOUT & IOAN DURNESCU



# COMPARATIVE OVERVIEW

	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Rationale	Too many FNP, overcrowding and minimum reintegration prospects	Too many foreign nationals in pre-trial arrest – consequences?
Precursors	CoE Convention on the Supervision of Conditionally Sentenced or Conditionally Released Prisoners – 1964 (1975) – only 19 of 47	-
Aim and purpose	Enhance social rehabilitation by: <ul style="list-style-type: none"> <li>- preserving family, social, linguistic ties,</li> <li>- improving monitoring of compliance</li> <li>- prevent recidivism</li> <li>- protect the victim and the public</li> </ul>	Protection of the victim and the general public. Supervision of the people while awaiting trial – ensure the due course of justice. Enhancing the right to liberty and the presumption of innocence. Use of non-custodial measures for pre-trial. Equal treatment for non-residents

# COMPARATIVE OVERVIEW

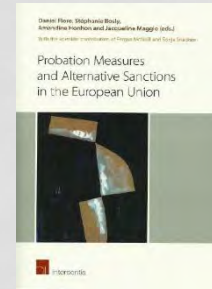
	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Where?	To the MS where the person is lawfully and ordinarily residing – if they returned or want to return Another MS – upon request and consent of the MS	To the MS where the person is lawfully and ordinarily residing – <b>informed and consents</b> Other MS but only with consent of that MS.
Characteristics	The system of competent authorities Eleven types of probation measures – added more if ...	The system of competent authorities <b>Recourse of the central authority</b> Six supervision measures (obligatory – report, not to enter, remain in places etc.) Five other measures (may be prepared – treatment, money etc.)
Procedure	Certificate and the sentence EJN - <a href="http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx">http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx</a>  Adaptation – nature and duration ES – 60 days to decide Double criminality – 32	Certificate + Decision on the supervision measures. Specify: length of time, renewal and the provisional length of time needed EJN ES – 20 days for decision + possible another 20 days – inform Adaptation – the nature in line with the national legislation for equivalent offence Double criminality - 32

# COMPARATIVE OVERVIEW

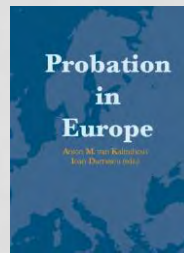
	FD 947/2008 on alternative to detention and probation decision	FD 829/2009 on alternatives to provisional detention
Grounds for non-recognition	<p>Certificate incomplete Not willing to return Other measures than the 11 Less than 6 months until the end etc.</p>	<p>Certificate incomplete Measures not obligatory Ne bis in idem Immunity In case of breach would not apply the EAW – but consultation etc.</p>
Law governing supervision	<p><b>ES takes all subsequent decision</b> except alternative sentence if custody is not an option in case of breach.</p> <p>Transfer jurisdiction back</p>	<p>ES In case of continuation – IS may request to extend the monitoring by the ES. ES decides according to its own national law. <b>All subsequent decision taken by the IS</b> – renewal, modification, arrest warrant ES may adapt or refuse</p>
Deadline of implementation	6 <sup>th</sup> of December 2011	1 December 2012

# SEVERAL PROJECTS

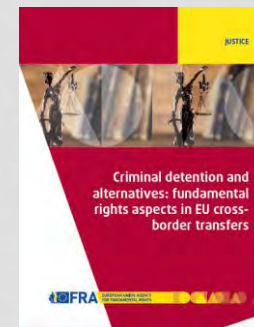
- Probation measures and alternative sanctions in the EU - <http://www.euprobationproject.eu>
- ISTEP [www.probation-transfers.eu](http://www.probation-transfers.eu)
- STREAM [www.stream-probation.eu](http://www.stream-probation.eu)



- CEP Expert Group



- FRA Report on Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfer



# STATE OF IMPLEMENTATION

	FD 947/2008	FD 829/2009
Transposed	26 MS	26 MS
In process of transposition	1 MS	1 MS
Not transposed	1 MS	1 MS (Bulgaria)
Practice	<p>Occasional</p> <p>Hub countries – BE, NL and DE – 81 cases up to August 2015.</p> <p>RO: 2 requests to Lithuania and Bulgaria</p>	<p>Limited</p> <p>RO:</p> <ul style="list-style-type: none"> <li>- 1 request to Bulgaria ?</li> <li>- 2 requests from Spain and Hungary</li> </ul>

# ONE CASE STUDY

Mr. CV is an adult under the supervision of the Probation Service in Roritania. He is currently working in Auritania and therefore expressed his wish to be transferred to this country.

He has asked the Probation service in Roritania to be transferred to Auritania. Probation service asked the competent judge to start the procedure.

As the procedure is new, none of the above knew what to do. The judge asked the Probation service about the procedure. The Probation service asked the Probation Directorate about the procedure.

This delay and uncertainty created some frustration in the supervised person:

*'not only that they did not know the procedure but they didn't even treat me warmly'*

# ONE CASE STUDY

At a latter stage, when the Probation service received the information from the Probation Directorate – official request 11.02.2014

CV had to make many trips from Roritania to Auritania and back to collect documents and attend supervision appointments. He was not informed about how supervision will look/feel like in Auritania.

On the 29.09.2014 – the transfer was approved by the court in Auritania.

# CASE STUDY

The transfer was possible because Auritania declared in the light of art. 5(4) of the FD 947:

*'Auritania declares that monitoring of supervision measures or alternative sanctions by the competent Auritanian court can be approved irrespective of whether the sentenced person has their domicile or permanent residence in Auritania, if because of specific circumstances ties exist between the sentenced person and Auritania of such intensity that it can be assumed that monitoring in Auritania will help facilitate the social rehabilitation and reintegration of the sentenced person.'*

CV has a job in Auritania !!!



# CASE STUDY

When CV arrived in Auritania for supervision he was surprised to find a very supportive probation counselor:

*'when I have arrived in Auritania I **didn't** even know very well the language. They all started to ask me: shall we bring you a translator? Do you need anything ? What can I say ... even now when the probation time is over, the lady still calls me asking me if I need anything, if I have any problem, if I have a job ... '*

# CASE STUDY

Furthermore, he was very happy to notice that the probation counselor has a totally different approach than the one in Roritania:

*'...in Roritania I was constantly asked to do this and that. They were like my bosses. If I find a job in Auritania or elsewhere I should be supported to go there because this will help me not to reoffend. Right? Otherwise I will have to commit crimes again.'*

**Question:** How CV would have reacted if he would be transferred from Auritania to Roritania ????

# CONCLUSIONS (FOR 947 AND 829)

Based on the case study, research and the projects mentioned above.

- The procedure is still unknown by the judiciary and the probation services
- The procedure is still taking very long and sometimes too bureaucratic
- Probationers/supervised suspects should be informed about how supervision is constructed in the ES: how is the frequency of the meetings decided, if they can expect any practical help or not, how is the relationship with the probation/supervision counselor, how is the breach procedure etc.
- **Informed consent** – the core of legitimacy and the substantive compliance. Now it is implicit and not-informed.

# CONCLUSIONS (FOR 947 AND 829)

- Too many competent authorities – example in FD 829 !!!
- The FD covers mainly the judicial process and not the supervision process logic – no information exchange between probation/supervision services, continuity etc.
- Praetorian probation is not covered in the FD 947 – the prosecution decisions can not be transferred.
- Poor state of implementation (947 and more in particular 829)
- Not all alternatives to pre-trial detention are available in the MS or -if available-are rarely used (928)
- In many MS sentencing options are very limited (947)

# SOME SOLUTIONS ?!!

- Clearing houses – MoJ or Probation Directorates
- Close cooperation between probation/supervision services – maybe based on hub approach: regional or traditional networks (e.g. Nordic states, Belgium-Germany-Netherlands, Romania-Italy-Spain) – following the migration or touristic trends.
- More consultation and information sharing - CEP website
- More training for judges and probation services – personal contact
- Upgrade the FD with the praetorian probation and informed consent
- Expert Groups – CEP – with national representatives and independent experts

# SOME SOLUTIONS ?!!

- Monitoring system – databases of jurisprudence
- Commission handbooks
- invest in more research/factual information on the effectiveness of alternatives to detention and pre-trial detention
- More awareness is needed, not only with civil society but also with judges, public prosecutors and lawyers.

Thank you !!

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